Heard 2-664 Judge Davis
Feb 3 — Aff
Clifford Dissents

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 140.

AMES L. D. MORRISON, JULIA A. A. S. MORRISON, HIS WIFE, AND EDWARD ABEND, TRUSTEE OF SAID JULIA A. A. S. MORRISON, PLAINTIFFS IN ERROR,

VS.

WILLIAM H. BENTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 24, 1874.

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a UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1873, thereof, between James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs, and William H. Benton, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-three.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S., Eastern Dist. Mo.,
By H. C. GEISBERG,
Deputy.

Allowed by

SAMUEL TREAT,
Judge.

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

In obedience to the within writ, I herewith send to the Supreme Court of the United States a duly-certified transcript of the record and proceedings in the within-mentioned case, with all things concerning the same.

Witness my hand, at office in the city of St. Louis, in said district, this 31st day of December, A. D. 1873.

AUSTIN DRAKE,
Clerk of said Court
By H. C. GEISBERG,
Deputy.

(Indorsed:) United States circuit court, eastern district of Missouri. James L. D. Morrison et. al., plffs. in error, vs. Wm. H. Benton, deft. in error. Writ of error to the circuit court of the United States for the eastern district of Missouri. Returned and filed , 187 . clerk.

b The United States of America to William H. Benton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the *first* second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, one of the judges of the circuit court of the United States for the eastern district of Missouri, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-three.

SAMUEL TREAT,
Judge United States Circuit Court Eastern District of Missouri.

(Indorsed:) United States circuit court, eastern district of Missouri. James L. D. Morrison et. al., plffs. in error, vs. Wm. H. Benton, deft. in error. Citation. Filed , 187 . , clerk.

The defendant William H. Benton admits due service on him of the within citation January 13, 1874.

JOHN M. KRUM,
Atty. for Wm. H. Benton.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri:

Pleas before the honorable circuit court of the United States, in and for the eastern district of Missouri, at the September term thereof, A. D. 1873.

TRANSCRIPT.

Petition filed.

JAMES L. D. MORRISON AND JULIA A. A. S. Morrison his wife, and Edward Abend, trustee for Julia A. A. S. Morrison, plaintiffs,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition in ejectment.

Be it remembered that heretofore, to wit, on the 6th day of August, A.D. 1873, there was filed in the office of the clerk of the circuit court of the United States, in and for the eastern district of Missouri, a petition in ejectment, in words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States within and for the eastern district of Missouri, September term, 1873.

JAMES L. D. MORRISON AND JULIA A. A. S. Morrison his wife, and Edward Abend, trustee for Julia A. A. S. Morrison, plffs.,
vs.
WILLIAM H. BENTON, DEFT.

2 Plaintiffs, James L. D. Morrison, and Julia A. A. S. Morrison his

wife, and Edward Abend, trustee of Julia A. A. S. Morrison, state that they are all citizens of the State of Illinois; that the defendant is a citizen of the State of Missouri.

Plaintiffs further state that on the seventh day of July, 1873, they were entitled to the possession of the following-described premises, situate, lying, and being in the county of Saint Louis, and State of Missouri, to wit: The undivided two-thirds (⅔) part of United States survey numbered nineteen hundred and fifty-three, (1953,) containing in the whole of said survey six thousand and two acres, more or less, and being so entitled to the possession thereof; that the defendant afterwards, on the 8th day of July, 1873, entered into said premises and unlawfully withholds from the plaintiffs the possession thereof, to their damage in the sum of one thousand dollars.

Plaintiffs state that the value of said premises is ten thousand dollars; that the monthly value of the rents and profits of the said premises is one thousand dollars. Wherefore, the plaintiffs demand judgment for the recovery of the premises and one thousand dollars damages for the unlawfully withholding of the same from the plaintiffs, and one thousand dollars for monthly rents and profits from the rendition of judgment until the possession of the premises is delivered to the plaintiffs, and for costs.

JAMES L. D. MORRISON, *in propri' pers'æ.*
SAM'L N. HOLLIDAY, *Atty. for Plffs.*

3 Whereupon there issued out of the clerk's office of the circuit court of the United States in and for the eastern district of Missouri a summons, in words and figures following, to wit:

Summons.

EASTERN MISSOURI DISTRICT, *sct:*

The President of the United States of America to the marshal of the eastern district of Missouri, greeting:

You are hereby commanded to summon William H. Benton, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the eastern district of Missouri, on the first day of the next term thereof, to be holden at the city of Saint Louis, in and for said district, on the third Monday of September next, then and there to answer the complaint of James L. D. Morrison, and Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, citizens of the State of Illinois, as set forth in the petition filed in said court on the 6th day of August, A. D. eighteen hundred and seventy-three. Hereof fail not, and have you then and there this writ. Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, the 6th day of August, A. D. eighteen hundred and seventy-three. Issued at office in the city of Saint Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] AUSTIN DRAKE, *Clerk of said Court.*

Upon which summons the marshal of the United States for the eastern district of Missouri made the following return, to wit:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss :

Executed this writ by leaving a copy of the summons, together with a
copy of the petition for the within-named William H. Benton, at
4 his usual place of abode at St. Louis, within the eastern dis-
trict of Mo., with a white person over the age of fifteen years and
a member of his family.

August 6th, 1873.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By WM. H. BIERSTADT,
Depty.

And afterwards, in vacation of said circuit court, the following answer was filed in this case, on the 28th day of August, 1873 :

Answer.

In the circuit court of the United States for the eastern district of Missouri.

JAMES L. D. MORRISON, JULIA A. A. MORRISON his wife, and Edward Abend, trustee of said Julia A. A. Morrison,
vs.
WILLIAM H. BENTON.
} Ejectment.

The defendant in the above-entitled cause comes, and for answer to the plaintiffs' petition states that the plaintiffs were not entitled to the possession of the lands and premises described in their said petition, at the time therein alleged, nor are the plaintiffs now entitled to the possession of said premises.

The defendant, for further answer, denies that he unlawfully or wrong-
fully entered into the possession of said premises, as alleged, and de-
nies that he wrongfully and unlawfully withholds the possession of said
premises from the plaintiff as alleged.

5 And for further answer to the plaintiffs' petition, the defendant
states that he and the parties under whom he claims and derived
title to the premises described in said petition, have held peaceable,
continuous, undisturbed, adverse possession of said premises, for a
period of ten years next before the institution of the plaintiffs' said ac-
tion.

KRUM AND PATRICK,
Attys. for Deft.

And afterwards, at the regular stated term of said circuit court, begun and held at the city of St. Louis, in and for said district, on the 3d Monday, the 15th day of September, A. D. 1873, the following further proceedings were had in this case on Tuesday, the 16th day of September, in said year, to wit :

Waiver of jury filed.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

This day comes the defendant, by his attorneys, and files an agreement in writing, signed by counsel for the parties, waiving a jury in this case.

The agreement filed as aforesaid on the 16th day of September, A. D. 1873, is in the words and figures following, to wit:

Jury waiver.

JAMES L. D. MORRISON ET AL.
vs.
WILLIAM H. BENTON.
} Ejectment.

The parties to this cause, by their respective attorneys, waive a jury-trial.

JAMES. L. D. MORRISON,
6 *In person & for Plffs.*
KRUM & PATRICK,
Attys. for Deft.

And afterwards, at said last-mentioned term of said circuit court begun and holden as aforesaid, the following further proceedings were had in this case, on Thursday, the 18th day of September, A. D. 1873, to wit:

Amended answer filed.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

This day comes the defendant, by his attorneys, and by leave of court files his amended answer to the petition of said plaintiffs herein.

The amended answer filed as aforesaid on the 18th day of September, 1873, is in the words and figures following, to wit:

Amended answer.

In the United States circuit ct., eastern dist. of Missouri.

JAMES L. D. MORRISON ET AL.
vs.
WILLIAM H. BENTON.
} Ejectment.

EAST DIST. OF MISSOURI, *ss:*

And now comes the defendant in this cause and, by leave of court, files this his amended answer to the plaintiffs' petition, and says that at the time his suit was begun he was in possession of the following lots and parcels of land, all of which are situate within the outboundaries of United States survey No. 1953, described in said petition, to wit: lots number fifteen, (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty, (20,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,) thirty-
7 seven, (37,) thirty-eight, (38,) and forty, (40,) as said lots and parcels of land are designated and described in and by the McKenzie subdivision of a portion of said survey No. 1953, which said subdivision is platted and recorded in the recorder's office of St. Louis

County, & this defendant denies that he was or is in possession of any other parts or portion of said survey 1953.

For further answer the defendant denies that the plaintiffs were entitled to the possession of said lots and parcels of land on the day of , A. D. 18 , as alleged in said petition, nor are they now entitled to the possession thereof.

For further answer this defendant denies that he unlawfully entered into or upon the said lots and parcels of land, as alleged, and denies that he unlawfully and wrongfully withholds possession of said parcels of land from the plaintiffs, as alleged.

For further answer this defendant states that he and the parties under whom he derives and claims title to the said parcels of land have been in the actual, undisturbed, continuous, adverse possession of the said lots and parcels of land for ten years and upwards next before this suit was begun.

KRUM & PATRICK,
Attys. for Defendant.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this case on Monday, the 29th day of September, A. D. 1873, to wit:

Trial begun.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

8 This day comes the plaintiff, James L. D. Morrison, in his own proper person, and also by the attorneys for said plaintiffs, Messrs. Jewett, Holiday and Holmes, and also comes the defendant, by his attorneys, Messrs. Krum & Shepley, and this case being regularly called for trial and both parties being ready, and an agreement waiving a jury herein having been filed, said case was thereupon tried by the court sitting as a jury, but the hearing thereof not having been concluded at the hour of adjournment, it is ordered that further proceedings therein be continued until to-morrow morning.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this case on Thursday, the 30th day of September, A. D. 1873, to wit:

Trial continued.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

This day come again the parties, by their respective attorneys, as on yesterday, and thereupon the hearing of this case was resumed, and the same was further heard and argued by counsel; but such argument not having been concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this case on Wednesday, the 1st day of October, A. D. 1873, to wit:

Trial continued.

9 JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

This day come again the parties, by their respective attorneys, as on yesterday, and thereupon said case was further argued by counsel; but such argument not having been concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this case on Thursday, the 2d day of October, A. D. 1873, to wit:

Trial concluded.—Case taken under advisement.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

This day come again the parties, by their attorneys, as on yesterday, and thereupon the arguments of counsel were resumed; and after the conclusion thereof the case was submitted to the court upon the pleadings and proofs; and, not being fully advised in the premises, the court takes the same under advisement.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this case on Saturday, the 22d day of November, A. D. 1873, to wit:

Finding.

JAMES L. D. MORRISON ET AL., PLAINTIFFS,
vs.
WILLIAM H. BENTON, DEFENDANT.
} Petition.

10 This day come the plaintiffs, by attorney, and this case having been heretofore tried by the court, sitting as a jury, (an agreement in writing to waive a jury being on file,) and having been argued by counsel for the respective parties, and submitted to the court upon the pleadings and proofs; on consideration whereof, and being now fully advised in the premises, the court finds for the defendant on the issues joined herein, and returns a special finding of the facts as proven on the trial, which is filed and ordered to be made a part of the record in this case.

Judgment.

It is therefore now considered by the court that the plaintiffs, James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, take nothing by their writ herein, and that the defendant, William H. Benton, go hence without day, and recover against said plaintiffs the costs in this behalf expended, and that execution be issued therefor.

The special finding of the court, above referred to and filed as aforesaid, is in the words and figures following, to wit:

Special finding of the court.

JAMES L. D. MORRISON ET AL.
vs.
WILLIAM H. BENTON.

This case having been tried by the court without the intervention of a jury, pursuant to an agreement in writing duly signed, the court doth find specially the following facts:

On the 26th October, 1802, Gregoire Sarpy, resident at St. Louis, presented his petition to Charles Dehault Delassus for a concession, of which the following is a translation:

Petition of Gregoire Sarpy to C. D. Delassus for a concession, Oct. 26, 1802

Mr. Charles Dehault Delassus, lieutenant-governor and com-
11 mandant-in-chief of this part of Illinois:

Mr. Gregoire Sarpy, inhabitant of this city, has the honor to represent to you that having constructed a mill for superfine flour, and said mill having, by its erection, led him into very extensive expenses, in order to recover a little more completely from his expenses and advance the utility of said establishment to the highest degree, he has caused to be added to this first mill another, to saw timber, which will be of great advantage for the upper part of this colony; but said establishment being entirely out of timber, he begs you, sir, to concede to him the quantity, of 6,000 arpents of land, in superficies, to be taken from along the river Des Peres, and in the woodland parts that belong to the domain of the King; having to observe to you that these lands, being extremely cut up and hilly, the wood is only found in clusters more or less large. The petitioner, convinced of the interest you show for all establishments useful and advantageous for the public, hopes this favor of your goodness.

(Signed) GREGOIRE SARPY.

St. Louis, October 26, 1802.

The following is a translation of the concession granted by said Delassus, and of the survey, with accompanying descriptive plat, by Antoine Soulard; all of the foregoing documents being found of record in the office of U. S. recorder of land-titles in St. Louis, Missouri:

Concession granted by C. D. Delassus to Greg. Sarpy, Oct. 28, 1802.

SAINT LOUIS OF THE ILLINOIS, *October* 28, 1802.

Having seen the above, and whereas it is to my knowledge that in
the neighborhood of this city, and in the establishment possessed by the
petitioner, he does not make much building-lumber, and it is in-
12 dispensable that he may make some profit of his enormous ex-
penses in said construction, which will become of public utility, I
do concede for him and his heirs the land which he solicits, if it does

not prejudice to any person; and the surveyor of this Upper Louisiana, Mr. Antoine Soulard, will place the interested party in possession of the quantity of land which he asks in the indicated location. This done, he will make a plan, which he will deposit at this post, and a certificate which will serve to obtain the concession and the legal title from the intendant-general, to whom belongs, particularly, by royal decree, the granting and conceding of all the classes of vacant lands.

(Signed) CHARLES DEHAULT DELASSUS.

(Here follows map, marked page 12.)

13 *Surveyor's note.*

NOTE.—The limits placed at all the angles and the boundaries at 20 arpents between each other, are all indicated in the figurative plan. All the trees on the lines are distinguished with an upper blaze and two inferior longitudinal cuts, and those to right or left blazed only. Entered in book B of the expositions of surveys for this part, Fo. 5, No. 3.

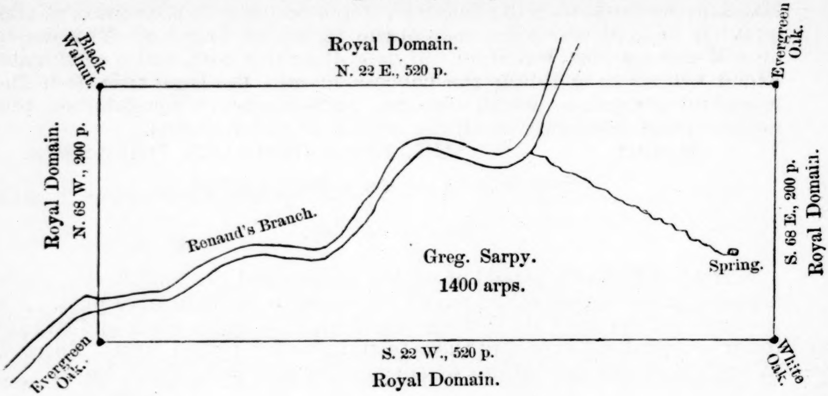
Surveyor's certificate.

I, Antoine Soulard, surveyor part of the Upper Louisiana, do certify that a land of 4,002 arpents was measured, marked, and limited, in favor and in presence of Gregory Sarpy; the said gentleman reserving to himself the faculty of choosing the complement of his concession, which is of 6,000 arpents of superficies, in one or more vacant portions of the royal domain, measured with the perch of the city of Paris, of 18 linear king's feet measure of said city in this province.

The said land, situate at about 8 miles from the Meramec River ford, and at the same distance S. W. of said city of Saint Louis, is bounded as follows: On N. in part by the uncleared lands of the royal domain and by the lands of Mr. Charles Gratiot and of Mrs. Widow Camp; on S. and W. by the lands of the royal domain; on E in part by the aforesaid royal domain and the lands of the same owners aforesaid. Said surveys and measures were made without touching the variation of the magnetic needle, which is 7 deg. 30 min. E., as it is ascertained in the figurative plan which precedes, in which are noted the dimensions and rhumbs of the limits and other landmarks, etc. Said survey was performed in virtue of the royal decree of sir lieut. governor and under
delegate of the royal domain, Chs. Dehault Delassus, dated Octo-
14 ber 28th of the last year, to which is joined the title of prop-
erty, and in order that all which is referred to it be acknowledged, I do give these presents, with the figurative plan which precedes, according to diligences practiced by the lt. surveyor, Mr. James McKay, in date of March 18, 1803.

ANT. SOULARD, *Surv. Part.*

2d Spanish survey.



Surveyor's note.

NOTE.—The landmarks put at the four angles are indicated in the figurative plan. All the trees on the lines are distinguished with a blaze superior and two longitudinal cuts inferior, and those on the right and left blazed only. Entered in Book C of the exp. of surveys for this part, Fo. 63, No. 63.

Surveyor's certificate.

I, Antoine Soulard, surveyor part of the Upper Louisiana, do certify that a land of 1,400 arpents of superficies was measured, limited, and bounded in favour of Mr. Greg. Sarpy, in presence of the lieut. surveyor as attorney of said owner, it being a part of the totality of 6,000 arpents of superficies which was conceded him, as it is ascertained by data here expressed; of said quantity a part of 4,002 arpents of superficies was previously measured at the river Des Peres, as shown by the certificate of the two surveys that I enter. The totality of the two surveys 15 makes 5,402 arpents of superficies, to which lacks the quantity of 598 arpents to complete the totality of the 6,000 arpents which were conceded to him by the lieut. governor, which were measured with the perch of the city of Paris, of 18 linear king's feet of the same city, according to the agrarian measure of this province. The said land is situated at about 20 miles S. W. of St. Louis, bounded E. N. E., S. S. W., E. S. E., W. N. W. by the vacant lands of the royal domain. These surveys and measures were made without regard to the magnetic needle, which is 7 deg. 30 min. E., as shown by the figurative plan which precedes, in which are indicated the dimensions and rhumbs of the landmarks, and other limits, &c. The said survey is made in virtue of the decree of C. D. Delassus, lieut. governor and subdelegate of the royal domain, dated October 28, 1802, which is annexed thereto; and for all which is above, I do give these presents, with the figurative plan which precedes, drawn in conformity to diligences made by the lieut. surveyor, Mr. John Terrey, in date of January 2, 1804, who signed the minutes of what I give.

(Signed) ANT. SOULARD, *Surv. Part.*

ST. LOUIS OF THE ILLINOIS, *April* 15, 1804.

Said documents, with claims based thereon, were duly presented to the board of commissioners, under the acts of Congress of 1805 and 1807, by said Gregoire Sarpy, and the proceedings of said board state that "he claims thereunder 6,000 arpens of land situate in two places, viz: 4,002 arpens on the river Des Peres and 1,400 arpens on the Maremec, in the district of St. Louis, granted to said Sarpy by virtue of a grant or concession from Don Charles Dehault Delassus the 28th of October, A. D. 1802."

16 The record of the proceedings of said board, under date of Monday, December 9th, 1811, is as follows:

Proceedings board of commissioners, Dec. 9, 1811.

"Board met. Present: John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners. Gregoire Sarpy, claiming 6,000 arpens of land, situate river Des Peres, district of St. Louis, produces record of a concession from Charles D. Delassus, L. G., dated 28th October, 1802, records of a plat of survey of 4,002 arpens, dated 18th March, 1803, record of plat of survey of 1,400 arpens, dated 2d January, and certified 15th April, 1804. It is the opinion of the board that this claim ought not to be confirmed. Board adjourned until to-morrow, nine o'clock a. m.

(Signed) "JOHN B. C. LUCAS.
"CLEMENT B. PENROSE.
"FREDERICK BATES."

The following is an abstract of records in the office of the U. S. recorder of land-titles in the State of Missouri, as certified by the recorder:

Abstract of records in office U. S. recorder of land-titles in Mo., Nov. 1, 1815.

"Opinions of the recorder of land-titles for the Missouri Territory, as to claims entered under the act of June 13th, 1812, and proven before 1st January, 1814, as provided by the act of the 3d March, 1813, comprehending also the claims in the late district of Arkansas, which by act of 2d August, 1813, were to be permitted to be entered until 1st January, 1814, and proven until 1st July, 1814, together with the extensions of quantity provided by 4th section of the act of 3d March, 1813, and confirmations under the act of 12th April, 1814:"

17 Warrant or order of survey.	Survey.	Notice to the recorder, by whom.	Quantity claimed.
Con. fr. C. D. Delassus, Lieut. Govn. 28 Oct., 1802.	18 March, 1803, and 2d Jany., 1804.	Gregoire Sarpy.	6,000 arpens.
Where Situate.	*Poss'n, Inhab'n, & Cult'n.*		*Opinions of the recorder.*
River Des Peres, D't. St. Louis.			Confirmed for the quantity contained in a league square. O. S. C., p. 264, rep't 499.

RECORDER'S OFFICE, *St. Louis*, 8 *April*, 1861.

The above is correctly transcribed from page 1, of book No. 1, and page 63 of book No. 3, being two of the five small books in this office, with the following endorsement on the first and also on the fifth book, bel*ei*ved to be in the handwriting of Frederick Bates, to wit:

"These five small books are originals in the proper handwriting of the undersigned, being his decisions on land-claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the Commissioner of the General Land-Office, but not yet recorded in the books, because they have no authority till sanctioned by Government.

"St. Louis, Nov. 1, 1815.

"FREDERICK BATES,
"*Recorder of Land-Titles.*"

The 3d vol. of American State Papers shows the lists of claims reported by said Bates November 1st, 1815, and February 2d, 1816,
18 referred to in the act of Congress, approved April 29, 1816, (3 U. S. St. at Large, 328,) being four tabular lists, as follows:

Claims reported by Recorder Bates Nov. 1, 1815, *and Feb'ry* 2, 1816.

1. "Confirmation of village claims under act of Congress of 13th June 1812."
2. "Grants of the late board extended by virtue of the 4th section of the act of Congress of the 3d March, 1813."
3. "Confirmations of concessions, orders, or warrants of survey, principally under act of Congress of 12th April, 1814."
4. "Grants of claims founded on settlements under the several acts of Congress, commencing with that of 13th June, 1812, and ending with that of 12th April, 1814."

The claim in controversy is placed in the list marked No. 3, as follows: "Concession," Ch. D. Delassus, lt. gov.; "survey," 18th March, 1803, and 2d January, 1804; "claimant," Gregoire Sarpy; "land claimed," 6,000 arpens; "situation," river Des Peres. Opinion of the recorder, "confirmed, not exce'ding a league square."

The order of survey by Recorder Bates, if the calls were literally followed, would reverse the position of the tract and place the same east of the river Des Peres.

19 *Order of survey by Recorder Bates.*

No. of cert.	To whom confirmed or granted.	Nature of claim and where recorded.	Quantity and situation.	Boundaries, remarks, etc.	Survey, at whose expense.
	Gregoire Sarpy.	Con. C., p. 264.	A league square. 1st survey 4,002 arpens, on River des Peres, about 260 ps. below the forks.	N. 890 ps., W. 165 ps., S. 110 ps., W. 515 ps., S. 140 ps. to the River des Peres, & down the same to the beg. of 2d survey of 1,400 arps.; S. 22 W. 520 ps., S. 68 E. 200 ps., N. 22 E. 520 ps., N. 68 W. 200 ps.	U. S.

OFFICE OF THE U. S. RECORDER OF LAND-TITLES,
Saint Louis, September 22d, 1873.

This is to certify that the above is a true, full, and correct extract from a book marked "Descriptions of confirmed claims returned by Recorder Bates to the surveyor-general," which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder.*

20 Survey No. 1953, as included in the patent hereinafter described

21 *Patent certificate by Hunt, No.* 1033, *Sept.* 13, 1825.

Patent-certificate by Hunt, No. 1033, Sept. 13, 1825.

"No. 1033.] OFFICE OF THE RECORDER OF LAND-TITLES,
"*Sept.* 13, 1825.

"It is hereby certified that, pursuant to acts of Congress respecting claims to land in the Territories of Orleans and Louisiana, and Territory of Missouri, the claim of Gregoire Sarpy for the quantity of 7,056 arpents has been duly confirmed, and that on the 6th and 7th days of May, 1818, the said tract was regularly surveyed, containing $6{,}002\frac{50}{100}$ acres, as per plat herewith authenticated by the United States surveyor's office, and designated on the connected plat as No. 1953. Now, therefore, be it known that the said Gregoire Sarpy is entitled to receive a patent for the tract above mentioned.

(Signed) "THEODORE HUNT."

Thereupon the following official correspondence ensued:

Letter of John Graham, G'l Land-Office, to Wm. McKee, surv., St. Louis, Mo.. Dec. 14, 1825.

"GENERAL LAND-OFFICE, *Dec.* 14, 1825.

"SIR: A certificate of the recorder of land-titles, in favor of Gregoire Sarpy, with a plat of a survey of 7,056 arpents, made by Langham in 1818, has been presented to this office for a patent. On an examination of the reports, it appears that Sarpy claimed before the board of commissioners 6,000 arpents, situate on the river Des Peres, and produced a record of a concession from Lieut. Governor Delassus, dated 28th October, 1802, a record of a plat of survey of 4,002 arpents, dated 13th March, 1803, and record of a plat of the survey of 1,400 arpens, dated 2d January, and certified 15th April, 1804, and that, on the 9th December, 1811, the commissioners rejected the claim.

22 "Under the provisions of the act of 12th April, 1814, the recorder confirmed the claim 'not exceeding a league square.'

"I will thank you to examine the surveys produced to the board of commissioners, and inform me of the quantity of land actually contained within the surveys, as the quantity confirmed to the claimant by the act of 1814 will be limited to that contained in the surveys, provided it does not exceed a league square. I will also thank you to inform me if the lines of the survey made by Langham correspond with those of the surveys made in 1803 and 1804.

"With great respect, your obedient servant,

"JOHN GRAHAM.

"WM. MCKEE, Esq.,
Surveyor, St. Louis, Mo."

Report Commissioner G. L. Office to Hon. Richard Rush, Dec. 19, 1826.

On the 19th December, 1826, Commissioner G. L. Office made a report to the Hon. Richard Rush, in which, amongst other things, he treats this claim:

"3d. Class of cases in which patents have been suspended for claims supposed to have been confirmed under the act passed on the 12th April, 1814.

"2d. Gregoire Sarpy, for 7,046 arpents. In this Gregoire Sarpy obtained a concession for 6,000 arpents from the Spanish government,

on which a survey was made by the authority of that government for 4,002 arpents, 8 miles from St. Louis, and another survey, containing 1,400 arpents, was made under the same authority, about 20 miles from St. Louis. Sarpy entered his claim for 6,000 arpents, and filed the two surveys with the commissioners, who rejected the claim. These
23, 24 surveys, however, were confirmed by the act of 1814, and reported
by the recorder as so confirmed. The resurvey on which the patent is claimed is for 7,056 arpents. It includes one of the original surveys, which appears to have been accurately made, and contains, within the courses and distances, the quantity called for, 4,002 arpents. The patent on the resurvey is withheld because it varies from the original survey, and includes a large body of land confessedly not included in either of the surveys, and, therefore, not confirmed to the claimant. The papers in this case and a letter from Col. McKee, are submitted, that Congress may take such measures as to them may seem expedient and proper."

Act of Congress, approved Aug. 11, 1842.

Act of Congress, August 11, 1842, (6 U. S. St., 85.)

"An act for the relief of Gregoire Sarpy, or his legal representatives.

" Be it enacted, etc., That it shall be the duty of the proper officers of the United States to issue a patent to Gregoire Sarpy, or his legal representatives, for seven thousand and fifty-six arpents, containing six thousand and two acres and fifty-hundredths of an acre of land, pursuant to patent-certificate number one thousand and thirty-three, dated September thirteenth, one thousand eight hundred and twenty-five, and to *to* the survey thereof, numbered one thousand nine hundred and fifty-three, certified by the surveyor of Illinois, Missouri, and Arkansas, at St. Louis, on the thirteenth day of September, one thousand eight hundred and twenty-five.

"Approved August 11, 1842."

Certificate of Recorder Fish.

Certificate of Recorder Fish.

Confirmation of land-claims in Missouri by the act of 29th April, 1816, according to concessions and Recorder Bates' report of 2d February, 1816.

Number of claim.	Names of the claimants and confirmees.	Quantity claimed.	Nature of claim.	Number of—		
				Survey.	Township.	Range.
199	Gregoire Sarpy........	6, 000 arpens.	Concession 28th October, 1802.	1, 953	44 & 45 north.	6 east.

Quantity confirmed and contained in the survey.	Date of—		Reference to books in the recorder's office.	Remarks.
	Execution of the survey.	Return to the recorder.		
7, 056 arpens.	May, 1818....	13 September, 1825.	C, page 264, Bates' Decisions, page 63.	See act of 11 August, 1842. Also No. 20 of Exhibit L.

OFFICE OF THE U. S. RECORDER OF LAND-TITLES,
Saint Louis, September 24th, 1873.

This is to certify that the above is truly and correctly copied or extracted from a book marked "Exhibit of private land-claims in Missouri;" which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder*.

25 *Patent, dated February 1st*, 1869.

Patent dated February 1st, 1869.

The United States of America to all whom these presents shall come, greeting: Whereas, by the act of Congress approved 11th Aug., 1842, entitled "An act for the relief of Gregoire Sarpy, or his legal representatives," it is directed that patent shall be issued to Gregoire Sarpy, or his legal representatives, for seven thousand and fifty-six arpens, containing six thousand and two acres and fifty-hundredths of an acre of land, pursuant to patent certificate number one thousand and thirty-three, dated September thirteenth, one thousand eight hundred & twenty-five, and to the survey thereof, numbered one thousand nine hundred and fifty-three, certified by the surveyor of Illinois, Missouri, and Arkansas, at Saint Louis, on the thirteenth of September, one thousand eight hundred and twenty-five;" which survey is in the words and figures following, to wit:

(Here follows map, marked page 25.)

26 *Survey No.* 1953.

"Survey No. 1953.

"Surveyed for Gregoire Sarpy, who claims in his own right 7,056 arpens, equal $6{,}002\frac{50}{100}$ acres of land, situate in township' 44 & 45 north, range No. 6 east of 5th princ'l me'd'n, on the river Des Peres. Begin at Eugene Alvarez' upper corner, on the river Des Peres, a stone from which a blue ash 9 ins. in dia. bears N. 14 E. 34 links, & a sycamore 18 ins. di. N. 65 E. 31 l.; thence S. 36 W. 52 ch's to a stone; thence N. 83½ W. 147 chains 65 links to a stone; thence S. 6½ W. 33 ch's 50 l. to a post corner, from which a b. oak 10 ins. in di. bears S. 25 E. 30 l., and a w. o. 6 ins. di. N. 11 W. 58 l.; thence N. 83½ W. 54 ch. 60 l. to a hickory corner; thence N. 6½ E. 30 ch. 85 links, a b. o. 12 ins. di. 127 ch's 50 l. to a post corner, from which a b. o. 10 ins. di. bears N. 89 W. 37 l., and a w. o. 8 ins. di. N. 80 W. 35 l.; thence N. 83½ W. 161 ch. 50 l. to a post corner; from it a b. o. 10 ins. di. bears N. 87 E. 417 l. and a w. o. 10 ins. di. S. 86 W. 168 l.; thence N. 6½ E. 55 ch. to the line between townships 44 & 45 N., R. 6 E. 10 ch's east of the corner of secs. 31 & 32 in T. 45 N., at 161 ch's 50 l., set post corner, from which a w. o. 12 ins. di. bears S. 16 E. 234 l., and a w. o. 12 ins. di. S. 15 W. 127 l.; thence S. 83½ E. 161 ch's 50 to corner post on the bank of river Des Peres, from which an elm 10 ins. di. bears S. 52 E. 39 l., and an elm 8 ins. di. bears S. 43 W. 77 l., and a b. walnut 18 ins. di. N. 82, W. 16 l.; thence down said river (with the meanders) to Charles Gratiot's line, (of which the general course is S. 73¼ E., and the direct distance is 40 ch's 50 links;) thence with Gratiot's
line S. 8° 40′ W. 32 ch's 60 l. to his corner post, from which
27 a b. jack 6 ins. di. bears S. 7 E. 73 l., and a b. j. 6 ins. di. S. 32 E.
95 l.; thence S. 83 E. 38 ch's 50 l. to the river Des Peres; thence

down the said river with the meanders thereof on the left bank, as follows: S. 10 W. 3 ch's, S. 5 W. 3 ch's, S. 36 W. 5 ch's, S. 60 E. 3 ch's, S. 75 E. 6 ch's, S. 5 E. 6 ch's, S. 31 E. 5 ch's, S. 42 E. 6 ch's, S. 32 E. 7 ch's, N. 78 E. 4 ch's, S. 65 E. 3 ch's, S. 25 E. 6 ch's, S. 3 W. 10 ch's, S. 9 E. 5 ch's, S. 11 W. 5 ch's, S. 40 E. 1 ch., S. 71 E. 3 ch's, 50 l.; N. 72 E. 4 ch's, S. 55 E. 1 ch., S. 32 E. 6 ch's, S. 11 E. 7 ch's, S. 18 W. 3 ch's, S. 64 W. 3 ch's 50 l., S. 84 W. 9 ch's, S. 53 E. 4 ch's, S. 82 E. 2 ch's, N. 77 E. 9 ch's, S. 20 E. 5 ch's, south 14 ch's, S. 78 E. 1 ch. 50 l., N. 68 E. 1 ch., N. 50 E. 4 ch's, S. 83 E. 3 ch's, S. 20 E. 8 ch's, S. 63 E. 2 ch's, S. 86 E. 6 ch's 50 l., S. 23 E. 9 ch's, S. 7 W. 4 ch's, S. 52 W. 3 ch's, S. 67 W. 5 ch's, S. 33 W. 2 ch's, S. 14 E. 1 ch. 50 l., S. 48 E. 3 ch's, S. 61 E. 9 ch's, S. 40 E. 13 ch's, S. 28 E. 10 ch's, S. 52 E. 10 ch's, east 3 ch's, N. 38 E. 2 ch's, N. 10 W. 6 ch's, N. 16 E. 3 ch's, N. 77 E. 3 ch's 40 l. to Spring Branch, S. 57 E. 3 ch's 20 l., S. 16 E. 9 ch's 50 l., S. 47 E. 2 ch's, S. 60 E. 1 ch. 50 l., S. 28 E. 2 ch's 50 l., S. 48 W. 3 ch's 50 l., S. 70 W. 3 ch's 50 l., S. 45 W. 2 ch's, S. 36 E. 2 ch's 50 l., S. 61 E. 2 ch's, S. 46 E. 3 ch's, S. 58 E. 5 ch's, S. 70 E. 4 ch's 50 l., S. 10 W. 7 ch's 50 l. to the mill, S. 73 E. 24 ch's to the beginning.

"May 6 & 7, 1818.

"A. L. LANGHAM,
"*Dep. Surv'r.*"

Surveyor's certificate.

"SURVEYOR'S OFFICE, ST. LOUIS, MISSOURI,
"*13th September*, 1825.

"I certify that the foregoing survey is a true copy of the original on file in this office, and that it is recorded in book B, pages 452 & 453.

28 "W. McREE,
"*Surv'r of Ill., Mo., & Ark.*"

Now, know ye that there is, therefore, granted unto the said Gregoire Sarpy, or his legal representatives, the tract of land embraced and described in the foregoing survey, to have and to hold the said tract, with the appurtenances, unto the said Gregoire Sarpy, or his legal representatives, and to his heirs and assigns forever.

In testimony whereof, I, Andrew Johnson, President of the United States, have caused these letters to be made patent and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of February, in the year of our Lord one thousand eight hundred & sixty-nine, and of the Independence of the United States the ninety-third.

By the President:

[L. S.] ANDREW JOHNSON,
By FRANK COWAN,
Secretary.

J. N. GRANGER,
Recorder of the General Land-Office.

29 *Deed of Sarpy by sheriff to Chouteau, June* 29, 1808.

30 Deed of Gregoire Sarpy by sheriff to Chouteau, June, 1808, with acknowledgments.

To all to whom these presents shall come, I, Jeremiah Connor, sheriff of the district of Saint Louis, send greeting:

Whereas writs of fieri facias were, on the thirteenth day of November and the seventeenth of December, in the year of our Lord one thousand

eight hundred and seven, the one in favor of Benoit Bezayou & wife, and the other in favor of Alexander McNair & others, against Gregoire Sarpy, issued out of the office of the clerk of the general court of the Territory of Louisiana, and two other writs of fieri facias were also, on the twenty-second day of November, in the year last aforesaid, the one in favor of Eulalie Dophimie, heir do. of f. Barriere, deceased, and the other in favor of Jean Baptiste Lemoine, issued out of the office of the prothonotary of the court of common pleas of the district of Saint Louis, against the said Gregoire Sarpy, copies of which said executions are hereunto annexed and make part of this deed; and whereas by virtue thereof, and to satisfy the said executions, I did levy upon and attach all the right, title, and interest of the said Gregoire Sarpy to a certain tract of land situate, lying, and being on the river Des Peres, district of Saint Louis, the same being part of the quantity of six thousand arpens granted to said Sarpy as per concession from Charles D. Delassus, dated the 28th October, in the year of our Lord one thousand eight hundred and two, containing, the said tract, four thousand two arpens, be the same more or less, and the same premises being by me, the said sheriff, advertised according to law, and afterwards, to wit, on the ninth day of March past, at the court-house door, and whilst the court of common pleas and quarter session of the peace for the district aforesaid w*h*ere
in session, exposed to sale, cried, and sold to Pierre Chouteau, of
31 the town and district aforesaid, for the sum of fifty dollars current
money of the United States: Now, therefore, know ye that, by virtue of the powers vested in me by law, for and in consideration of the sum of fifty dollars, as aforesaid, to me, the said sheriff, well and truly paid and fully satisfied by the said Pierre Chouteau, I do hereby grant, assign, transfer, and make over to him, the said Pierre Chouteau, his heirs and assigns, all the right, title, interest, and property of him, the said Gregoire Sarpy, in and to the aforementioned and described premises and appurtenances, to have and to hold the same to him, the said Pierre Chouteau, his heirs and assigns.

In testimony whereof I, the said sheriff, have hereunto set my hand and affixed my seal the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and eight.

JER'H CONNOR, [SEAL.]
Sheriff, D. St. L.

Signed, sealed, and delivered in the presence of—("fully" interlined; the words "being a part of the quantity of six thousand arpens" interlined.)

THOS. J. RIDDICK.
CABANNÉ.

On the 29th day of June, 1808, before me, the subscriber, a justice of the peace for the township of Saint Louis, personally came Jeremiah Connor, sheriff of the district of Saint Louis, and acknowledged the foregoing deed or instrument of *of* writing to be his act and deed according to the true *co*tent & meaning thereof, and the land and premises therein contained to be the right and title of the within-named Pierre Chouteau, his heirs and assigns.

THOS. J. RIDDICK.

TERRITORY OF LOUISIANA, *ss:*

The United States of America to the sheriff of the district of St. Louis, greeting:

Whereas Alexander McNair and others, at a general court of our Territory aforesaid, before our judges, hath recovered against Gregoire Sarpy
the sum of fourteen hundred dollars, and sixteen dollars and two-
32 third cents for their damages, and also the sum of two hundred and
ninety-four dollars and ten cents, which, to the said Alexander
McNair and others, were adjudged for their damages, as well by reason of detaining the said damages as for their costs in that suit expended, as appe'r' to us of record, these are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid seventeen hundred and ten dollars thirteen and two-third cents, and that you have the same before the judges of our said court on the first Monday of May next, to render the said Alexander McNair and others aforesaid; and for want of sufficient goods and chattels, lands and tenements whereon to levy and make the same, we command you that you take the said Gregoire Sarpy, if he be found in your bailiwick, and him safely keep, so that you have his body before the same judges on the said first Monday of May, to satisfy the said Alexander McNair and others of the said seventeen hundred and ten dollars and thirteen and two-third' cents, and that you certify to our said judges how you execute this writ*t*, and have you then and there this writ*t*.

Witness the honorable John B. C. Lucas, esquire, presiding judge of the said court, at St. Louis, this thirteenth day of November, in the year of our Lord one thousand eight hundred and seven, and of our Independence the thirty-second.

(Copy.) J. V. GARNIER, *Clerk.*

TERRITORY OF LOUISIANA, *ss:*

The United States of America to the sheriff of the district of Saint Louis, greeting:

Whereas Benoit Bezayou and wife, at a general court of our Territory aforesaid, before the judges, hath recovered against Gregoire Sarpy
the sum of three hundred and eighty-five dollars for their dam-
33 ages, and also the sum of forty-two dollars and seventy-two cents,
which to the said Benoit Bezayou and wife were adjudged for their
damages, as well by reason of detaining the said three hundred and eighty-five dollars as for their costs in that suit expended, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid four hundred and twenty-seven dollars and seventy-two cents, and that you have the same before the judges of our said court on the first Monday of May next, to render the said Benoit and wife aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you that you take the said Gregoire Sarpy, if he may be found in your bailiwick, and himself keep, so that you have his body before the same judges on the said first Monday of May next, to satisfy the said Benoit Bezayou and wife of the aforesaid four hundred and twenty-seven dollars and seventy-two cents, and that you certify to our said judges how you execute this writ; and have you then and there this writ.

Witness the honorable John B. C. Lucas, esquire, presiding of our said court, at St. Louis, this seventeenth day of December, in the year of our Lord one thousand eight hundred and seven, and of our Independence the thirty-second.

(Copy.) J. V. GARNIER, *Clerk.*

TERRITORY OF LOUISIANA,
District of Saint Louis, sct:

The United States of America to the sheriff of the district of St. Louis, greeting:

Whereas Eulalie Dofine, heir, etc., of f. Barriere, dec'd, at our court of
common pleas, before our judges, hath recovered against Gregoire
34 Sarpy the sum of one hundred and thirty dollars twenty-six cents,
for debt, and also the sum of eight dollars and seventy-nine cents,
which to the said Eulalie Dofine were adjudged for damages as well by reason of detaining the said debt as for costs in that suit expended, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid and costs, and that you have the same before the judges of our said court on the seventh day of March next, to render to said Eulalie Dofine the debt aforesaid; and for want of sufficient goods, chattels, lands, and tenements whereon to levy and make the same, we command you to take the said Gregoire Sarpy, if he be found within your bailiwick, and him safely keep so that you have his body before the same judges on the said seventh day of March, to satisfy the said debt and costs, and that you certify to our said judges how you execute this writ, and have you then there this writ.

Witness the honorable Silas Bent, presiding judge of our said court, at the town of St. Louis, the twenty-second day of November, in the year of our Lord one thousand eight hundred & seven, and of the Independence of the United States the thirty-second.

(Cop.) THOS. F. RIDDICK,
Clerk of St. L. D., C. P.

TERRITORY OF LOUISIANA,
District of Saint Louis, sct:

The United States of America to the sheriff of St. Louis district, greeting:

Whereas John Babtiste Lemoine, at our court of common pleas, before our judges, hath recovered against Gregoire Sarpy the sum of three hundred and forty-five dollars and forty-five cents for debt, and also the
sum of eight dollars thirty-three and a half cents, which to the said
35 John Babtiste Lemoine were adjudged for his damages, as well by
reason of detaining the said debt as for his costs in that suit
expended, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Gregoire Sarpy, you cause to be made the aforesaid debt and costs, and that you have the same before the judges of our said court on the seventh day of March next, to render to the said John Babtiste Lemoine the debt aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you to take the said Gregoire Sarpy, if he be found within your bailiwick, and him safely keep, so that you have his body before the same judges on the said seventh day of March, to satisfy the said John Babtiste Lemoine of the aforesaid debt and costs, and that you certify to our said judges how you execute this writ, and have you then there this writ.

Witness the honorable Silas Bent, presiding judge of our said court, at the town of Saint Louis, the twenty-second day of November, in the year of our Lord one thousand eight hundred and seven, and of the Independence of the United States the thirty-second.

(Copy.) THOS. F. RIDDICK,
Clerk of St. L. D., C. P.

Recorded this the 28th day of August, 1813.
M. P. LEDUC, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing, executed by Jeremiah Connor, sheriff, together with the acknowledgment thereof, as the same remain on record in my office, in book D, page 257.

36 Witness my hand and official seal this 26th day of August, 1826.

[SEAL.] W. C. KENNETT, *Recorder.*

Deed of Chouteau to widow Labadie, June 30, 1808.

Deed of Chouteau to widow Labadie.

[Translation.]

Know all men who shall see these presents, that we, Pierre Chouteau and Brigitte my wife, of the town and district of Saint Louis, and Territory of Louisiana, acknowledge to have this day sold, ceded, relinquished, and transferred, as by these presents we do sell, cede, relinquish, and transfer, just as I have acquired it from Jeremiah Connor, sheriff of the district of St. Louis, at the sale of the property of Gregoire Sarpy, by virtue of executions issued to him, as it appears by the sales of said sheriff, on the date of the twenty-ninth and thirtieth instant, to Pelagie Chouteau, widow Labadie, of the town, district, and Territory aforesaid, to wit: a land situated on the river Des Peres, in the district of St. Louis, containing the quantity of sixteen hundred and thirty-two arpents and forty-eight perches, more or less, upon which land there are a flour-mill, with a brick building, a dwelling-house, a barn, &c.; also, another land of four thousand and two arpens, also situated on the river Des Peres; and another land of fourteen hundred arpens, situated on the river Marrameck, in the district aforesaid, the two last lands forming a part of a concession of six thousand arpens granted to said Gregoire Sarpy by Dn. Charles Dehault Delassus, on the 28th of October, eighteen hundred and two; and, lastly, one arpent in front by forty in depth, situated on Marais Crothe, district of St. Charles,
37 & Territory aforesaid, for the price and sum of one dollar, current money of this county, which we acknowledge to have received of Pelagie Chouteau, widow Labbadie, and from which, by these presents, we give her a full release, desiring her to take possession of the said lands, and to hold the same from this day for her, her heirs or legal representatives, & as of property to them belonging, promising & ca., obligating & ca., renouncing, & ca.

In testimony whereof we have signed and sealed these presents be fore witnesses, in the town of Saint Louis, this thirtieth day of June, in the year of our Lord eighteen hundred and eight.

PIERRE CHOUTEAU. [SEAL.]
SAUCIER CHOUTEAU. [SEAL.]

CHARLES SANGUINET.
CABANNÉ.

Before the undersigned, one of the judges of the court of common pleas for the district of St. Louis and Territory of Louisiana, appeared Pierre Chouteau, who acknowledged that the foregoing deed was his own, that it contained his wishes, and that as such it might be recorded. And having separately examined Brigitte Saucier, his wife, and asked her if she had not be' constrained to sign the foregoing deed, and she having answered that she had signed it voluntarily and without compulsion, we have signed and sealed these presents on the 30th of June, 1808.

BERNARD PRATTE. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder of deeds for said county, certify the foregoing to be a true and correct copy of an instrument of writing from Pierre Chouteau and Brigitte Saucier, his wife, to Pelagie Chouteau, widow Labadie, of the date of filing and recording thereof, as
38 the same remains of record in my office, in book D, page 267.

Witness my hand & official seal this twenty-sixth day of August, A. D. 1873.

[SEAL.] W. C. KENNETT, *Recorder.*

Deed of Pratt & others (heirs) to W. P. Hunt, Aug. 29, 1817.

Deed of Pratte and others (heirs) to Wilson P. Hunt.

Know all men by these presents that we, Bernard Pratte and Emilie Labadie Pratte his wife, August P. Chouteau and Sophie Labadie Chouteau his wife, John Little and Marie Antoinette Little his wife, Silvestre Labadie and Victoire Gretiot Labadie his wife, and Gregoire Sarpy and Pelagie Labadie Sarpy his wife, all of the county of Saint Louis, in the Territory of Missouri, in consideration of the sum of twenty thousand dollars, to us in hand paid by Wilson P. Hunt, the receipt whereof we do hereby acknowledge, have this day given, granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and by these presents do give, grant, bargain, and sell, alien, enfeoff, release, and confirm, to the said Wilson P. Hunt, his heirs and assigns forever, two tracts of land, lying in the county of Saint Louis, in the Territory of Missouri aforesaid, on the river Des Peres, heretofore conceded under the authority of the Spanish government to the said Gregoire Sarpy; the one granted to the said Gregoire Sarpy, under the authority aforesaid, by Carlos Dehault Delassus, lieutenant-governor for the time being of the district of St. Louis, in the province of Upper Louisiana, by a concession bearing date the twentieth day of October, one thousand eight hundred and two, and in the figurative plan and certificate of survey made thereof by order of the
39 lieutenant-governor aforesaid, described as follows, to wit: Beginning at a stone on the south bank of said river Des Peres, and running thence south one hundred and forty perches; thence west five hundred and fifteen perches; thence south one hundred and twenty

perches; thence west one hundred and sixty-five perches; thence north eight hundred & ninety perches to white hickory or walnut on the said river; and thence down the said river to the beginning; and supposed to contain four thousand and two arpens, be the same more or less; the other tract of land granted originally under the authority aforesaid, and by the lieutenant-governor for the time being, to Antoine Reilhe and Mad'e Anne Veuve Camp, by a concession, supposed to contain two thousand nine hundred and five arpents, thirty-six perches, forty feet and six inches, of which the part of the said Antoine Rheilhe was, by regular conveyance, derived from him by the said Gregoire Sarpy, and which was afterwards divided by the consent of the said Mad'e Ve. Camp, and under the authority and direction of the said Carlos Dehault Delassus, between the said Gregoire Sarpy and the said Mad'e Anne Veuve Campe, and the portion of which allotted to the said Gregoire Sarpy is in the figurative plan and certificate of survey described as follows, to wit: Beginning at a point on the north bank of the said river, and running thence north twenty-three degrees east, thirty arpens; thence north nine and a half degrees east, thirty-four arpens; thence south seventy-three degrees west, five arpens and three perches; thence west sixty-nine arpents and two perches, and south forty-nine arpents and six perches to a point on the river, pursuing the line dividing the land so then allotted to the said Sarpy from the
40 land so then allotted to the said Anne Veuve Campe, and thence
down the said river to the beginning, and supposed to contain one thousand six hundred and thirty-two arpens, forty-eight perches, one hundred and five feet nine inches, be the same more or less, and comprehending a stone mill-house, dwelling-house, and back and other improvements situated thereon; which two said tracts of land were subsequently confirmed to the said Gregoire Sarpy, under the authority of the Government of the United States of America, by a board of commissioners, appointed with authority to confirm the same, which confirmation was finally ratified by an act of the Congress and President of the United States in that case made and provided, being all the lands on the said river Des Peres at any time granted to the said Gregoire Sarpy under the authority of the Spanish government, or claimed by him under the said Antoine Reilhe, or confirmed to him by the Government of the United States, and being also two of the tracts of land heretofore sold by Jeremiah Connor, sheriff of the county of Saint Louis, to satisfy certain debts of the said Gregoire Sarpy (in virtue of executions to him for that purpose directed) to Pierre Chouteau, and by the said Chouteau and Saucier Chouteau his wife, by deed bearing date the thirtieth day of June, one thousand eight hundred and eight, conveyed to Madame Pelagie Chouteau, Ve. Labadie, and which descended from her (she being now dead) to the said Bernard Pratte and Emilie Labadie Pratte, Auguste P. Chouteau, and Sophie Labbadie; John Little and Marie Antoinette Little, Silvestre Labadie, and Victoire Gratiot Labadie, and Gregoire Sarpy, and Pelagie Labadie Sarpy, and we do hereby give and grant, bargain and sell, alien, enfeoff, release, and confirm to the said Wilson P. Hunt, his heirs and assigns forever, all
41 the land which we may be entitled to in virtue of the said conces-
sions, or of the confirmation whereby the same was confirmed to the said Gregoire Sarpy by the board of commissioners of the United States of America, acting under the authority of the said United States, and the act of the President and Congress of the said United States, to have and to hold the said two tracts of land, with all ways, waters, woods, houses, out-houses, mills, easements, privileges, & advantages

thereon, or arising out of or accruing from the said concession or confirmation, to him, the said Wilson P. Hunt, his heirs and assigns forever. And we do hereby warrant, and for ourselves, our heirs, executors, administrators, do covenant to defend to the said Wilson P. Hunt, his heirs and assigns forever, the rights, titles, possession, and enjoyment into and of the said lands and all privileges and advantages thereunto appurtenant, or arising out of, or accruing from, the same, as above mentioned, against the rights, title, and claim of all and every persons or person whatsoever.

In witness of all which we have hereunto set our hands and seals this twenty-ninth day of August, one thousand eight hundred & seventeen.

BERNARD PRATTE. [SEAL.]
E. T. PRATTE *nee* LABBADIE. [SEAL.]
SILVESTRE LABBADIE. [SEAL.]
VICTOIRE LABBADIE *nee* GRATIOT. [SEAL.]
GREGOIRE SARPY. [SEAL.]
LABBADIE SARPY. [SEAL.]
LABBADIE CHOUTEAU. [SEAL.]
A. P. CHOUTEAU. [SEAL.]
JOHN LITTLE. [SEAL.]
MARY LABADIE LITTLE. [SEAL.]

Signed, sealed, and delivered in presence of—

F. M. GUYOT.

TERRITORY OF MISSOURI,
County of Saint Louis, sct:

Before me, the undersigned, one of the justices of the peace in and for the county and township aforesaid, personally appeared the within-
named Bernard Pratte & C. S. Pratte, born Labbadie, his wife,
42 Sylvester Labbadie and Victoire Labbadie, born Gratiot, his wife,
Gregoire Sarpy and Labbadie Sarpy his wife, Labbadie Chouteau, wife of August P. Chouteau, within named, who is absent at present, also John Little and Mari' Labbadie Little his wife, who all acknowledge the within instrument of writing to be their and each of their act and deed, hand and seals, for the purposes therein contained. The said E. S. Pratte, Victoire Labbadie Sarpy, Labbadie Chouteau, and Mari' Labbadie Little, being first separately and apart examined from their respective husbands, and by me made acquainted with the contents of the said instrument of writing, declare positively that they executed the same freely, voluntarily, and without fear, restraint, compulsion, or undue influence of their husbands.

Given under my hand and seal this thirtieth day of August, in the year one thousand eight hundred and seventeen.

F. M. GUYOT, [SEAL.]
A Justice of the Peace.

Recorded this 1st day of September, 1817.

AN. S. McGIRK, *D. E. F. Recorder,*
For M. P. LEDUC, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a deed from Bernd. Pratte et al. to W. P. Hunt, the certificate of acknowledgement, and also the date of recording, as fully as the same remains for record in my office, in book F, page 381.

Witness my hand and official seal this 6th day of April, 1861.

[SEAL.] A. C. BEMONDY, *Recorder,*
Pr. J. CONRAD, *Dy.*

TERRITORY OF MISSOURI,
County of St. Louis, Township of St. Louis, sct.:

43 Before me, the undersigned, one of the justices of the peace in and for the county and township aforesaid, personally appeared the within-named August P. Chouteau, who acknowledged the foregoing to be his act and deed, hand and seal, for the purpose therein mentioned, and that he executed the same voluntarily and freely, and wishes it to be recorded as such.

Given under my hand and seal this eighth day of September, in the year of our Lord one thousand eight hundred and seventeen.

F. M. GUYOT, *Justice of the Peace.*

Recorded this tenth day of September, 1817.

A. S. MCGIRK, *D. Clk.*,
For M. P. LEDUC, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a certificate of acknowledgment, and also the date of recording, as the same remains of record in my office, in book F, p. 389.

Witness my hand and official seal this 6th day of April, 1861.

[SEAL.] A. C. BENONDY, *Recorder*,
Pr. J. CONRAD, *Dy.*

Mortgage of Hunt to Pratte and others, Aug. 30, 1817.

Mortgage of Hunt to Pratte and others.

We, Bernard Pratte, Auguste P. Chouteau, John Little, Sylvester Labadie, and Gregoire Sarpy, the mortgagees mentioned in this deed of mortgage from Wilson P. Hunt, do by these presents acknowledge to have received from the said Wilson P. Hunt by the hand of Mess. Berthold & Chouteau, full, entire, and complete satisfaction of all demands, sum or sums of money herein mentioned, and do hereby release and discharge the said Hunt from the same, and do also release the said mortgaged premises from all lien, claim, or demands of ourselves or our heirs or executors.

Given under our hands and seals, St. Louis, this 8th day of November, 1819.

BERNARD PRATTE. [SEAL.]
JOHN LITTLE. [SEAL.]
GREGOIRE SARPY. [SEAL.]
SILVESTER LABADIE. [SEAL.]
A. P. CHOUTEAU.

Know all men by these presents that I, Wilson P. Hunt, in consideration of the sum of one dollar to me in hand paid by Bernarde Pratte, Auguste P. Chouteau, John Little, Sylvestre Labbadie, and Gregoire Sarpy, the receipt whereof I do hereby acknowledge, have this day bargained and sold, given, granted, aliened, enfeoffed, released, and confirmed two tract' of land lying in the county of St. Louis and Terri-
44 tory of Missouri, on the river Des Peres, heretofore conceded under the authority of the Spanish government, and by the lieutenant-governor for the time being for the district of St. Louis, in the province of Upper Louisiana, to the said Gregoire Sarpy, and subsequently

confirmed to him under the authority of the Government of the United States of America by a board of commissioners appointed with authority to confirm the same, which said confirmation was finally ratified by and act of the Congress and President of the United States in that case made and provided; the one of the said tract' lying on the south side of the said river Des Peres, and, in the figurative plan and certificate of survey made thereof by the order of the lieutenant-governor for the time being aforesaid, described as follows, to wit: Beginning at a stone on the south bank of the said river, and running thence south one hundred and forty poles; thence west five hundred and fifteen poles; thence south one hundred and twenty poles; thence west one hundred and sixty-five poles; thence north eight hundred and ninety poles to a white , on the south bank of the river, and thence down the said river to the beginning; the other tract of land aforesaid adjoining that last-mentioned, lying on the north side of the said river and, in the figurative plan and certificate of survey thereof made by order of the Spanish lieutenant-governor for the time being, described as follows, to wit: Beginning at a point on the north bank of the said river and, running thence north twenty-three degrees, east thirty arpens; thence north nine and a half degrees, east thirty-four arpens; thence south seventy-three degrees, west five arpens and three poles; thence west sixty-nine arpens and two poles, and thence south forty-nine
45 arpens and six poles, along a line dividing the said tract from
Anne V. Campe to a point on the river and thence down the said river to the beginning; on which last-mentioned tract are situated a stone mill, a dwelling-house, barn, &c., being all the land on the said river Des Peres at any time conceded to the said Gregoire Sarpy under the authority of the Spanish government, or confirmed to him by the Government of the United States.

To have and to hold the said two tract' of land, with all ways, waters, wood, houses, outhouses, easements, privileges, and advantages thereon or appurtenant thereto, or arising out of, or accruing therefrom, in virtue of the said commission, made under the authority of the Spanish government, whereby the above-mentioned tract' were granted to the said Gregoire Sarpy, or of the act of confirmation whereby the same were confirmed to him by the board of commissioners acting under the authority of the United States, and the act of the President and Congress of the United States, founded thereon; and I do hereby give, grant, bargain, and sell, alien, enfeoff, release, and confirm to the said Bernard Pratte, Auguste P. Chouteau, John Little, Silvestre Labbadie, & Gregoire Sarpy, their heirs and assigns forever, all the land to which I may be entitled in virtue of the said commission and confirmation and of a deed bearing date the twenty-ninth day of August, one thousand eight hundred and seventeen, by which the said Bernard Pratte and Emilie Labbadie Pratte his wife, the said Auguste P. Chouteau and Sophie Labbadie Chouteau his wife, the said John Little and Marie Antoinette Labbadie Little his wife, the said Sylvestre Labbaddie and Victoire Gratiot Labbadie his wife, and the said Gregoire Sarpy and Pelagie Labbadie Sarpy his wife, conveyed the same to me;
46 and I do hereby warrant, and for myself, my heirs, executors,
forever do covenant to defend to the said Bernard Pratte, Auguste P. Chouteau, John Little, Silvestre Labbadie, and Gregorie Sarpy, their heirs and assigns forever, the title and right, claim and interest, privileges and advantages, in and to and resulting from the said land, against the claim and interest of every person making title to the same under me, as fully as the same were by the said deed to me

conveyed; on condition, nevertheless, that, whereas I, the said Wilson P. Hunt, have this day given my bond to the said Bernard Pratte, Auguste P. Chouteau, John Little, Silvestre Little, Labbadie et Gregorie Sarpy, for the sum of ten thousand dollars, payable on the twenty-ninth day of August, one thousand eight hundred and nineteen. Now, if I, the said Wilson P. Hunt, shall well and truly pay and satisfy to the said Bernard Pratte, Auguste P. Chouteau, John Little, Silvestre Labadie, and Gregorie Sarpy, or their certain attorney, duly authorized to receive the same, the sum of ten thousand dollars, then this conveyance is to be void, and if I should not pay the same in manner and form as is above set forth, then it shall be the right and duty of the said Bernard Pratte, Auguste P. Chouteau, John Little, Silvestre Labadie, and Gregorie Sarpy, having previously advertised the said land for sale, in every newspaper which shall then be published in the town of Saint Louis, at least three months previous to the day appointed for the sale thereof, to sell the same at public auction to the highest bidder, and from the proceeds of such sale to deduct so much as shall satisfy to them the said sum of ten thousand dollars, with interest, and cost of the said advertisement and sale, and to pay the residue of such proceeds to me, the said Wilson P. Hunt, my executors or administrators, or my certain attorney thereunto
47 lawfully authorized.

In witness whereof I have hereunto set my hand and seal this thirtieth day of August, in the year of our Lord one thousand eight hundred and seventeen.

WILSON P. HUNT. [SEAL.]

Signed, sealed, and delivered, the words "one hundred and" being first interlined in the eighteenth line of the first page. The words "thence west one hundred and sixty-five poles" being also first inserted in the twentieth line of the same page, and the word "east" being also first inserted in the twenty-seventh line of the first page, in presence of me, the subscriber, one of the justices of the peace for the township and county of Saint Louis in the Territory of Missouri. St. Louis, the 30th day of August, in the year 1817.

F. M. GUYOT,
A Justice of the Peace.

Recorded this 20th day of September, 1817.

M. P. LEDUC,
Ex Re.
By A. S. McGIRK,
D. Ext Recorder.

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned, recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing executed by Wilson P. Hunt, together with the certificate of justice of the peace thereof, as the same remains on record in my office, in book F, page 406.

Witness my hand and official seal this 11th day of October, 1873.

[SEAL.] W. C. KENNETT,
Recorder.

Mortgage of Hunt to Astor, Feb'y 4, 1819.

Mortgage of Hunt to Astor.

We, the undersigned, executors of John Jacob Astor, dec'd, do hereby acknowledge to have received entire satisfaction of the mortgage executed by Wilson P. Hunt, and recorded on this & following pages, and do hereby release the premises thereby conveyed of all liens on account thereof.

Witness our hands and seals the 27th day of February, 1851.

WILLIAM B. ASTOR,
By his Atty. in fact,
JOHN R. SHEPLEY. [SEAL.]
J. J. ASTOR,
By his Atty. in fact,
JOHN R. SHEPLEY. [SEAL.]

For power of attorney, see Book T, No. 5, page 304.
Test:

S. D. BARLOW,
Recorder.

MISSOURI TERRITORY:

This indenture, made the fourth day of February, in the year of
48 our Lord one thousand eight hundred and nineteen, between Wilson
P. Hunt, of the county of Saint Louis, in the Territory aforesaid, of the one part, and John Jacob Astor, of the city and State of New York, of the other part, witnesseth: That whereas the said Wilson P. Hunt heretofore drew his several bills of exchange, that is to say, one in favour of Jonathan Smith for the sum of three thousand five hundred dollars, bearing date on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and eighteen, and four others in favor of Azariah Hunt, bearing date on the nineteenth day of February, in the year last mentioned, for the sums of one thousand dollars, one thousand five hundred dollars, one thousand eight hundred dollars, and two thousand two hundred dollars, respectively, all directed to the said John Jacob Astor, which were afterwards *ex*cepted and paid by the said John Jacob Astor, for the accommodation of the said Wilson P. Hunt, whereby the said Wilson P. Hunt has become indebted to the said John Jacob Astor in the several sums before mentioned, amounting in the whole to the sum of ten thousand dollars. And whereas it has been agreed between the said parties that the several sums paid by the said John Jacob Astor, as aforesaid, shall be repaid to him by the said Wilson P. Hunt, within two years from the date of each payment, respectively, together with interest at the rate of seven per cent. per annum, payable annually in the city of New York: Now, this indenture witnesseth: That the said Wilson P. Hunt, for and in consideration of the debt or sum payable as aforesaid to the said John Jacob Astor, and for the better securing the payment thereof according to the terms of the agreement aforesaid, and also
in consideration of the sum of one dollar by the said John Jacob
49 Astor to the said Wilson P. Hunt paid at and before the sealing
and delivery of these presents, doth grant, bargain, sell, alien, release, convey, and confirm unto the said John Jacob Astor, and to his heirs and assigns forever, the following tracts or parcels of land, lying in the county of St. Louis, and Territory aforesaid, on the river Des Peres, that is to say, four thousand and two arpens of land heretofore conceded under the authority of the Spanish government to Gregoire Sarpy by Carlos Dehault Delassus, lieutenant-governor for the time being n the district of Saint Louis, in the province of Upper Louisiana, by concession bearing date the twenty-eighth day of October, one thou-

sand eight hundred and two, and also one thousand six hundred and thirty-two arpents of land, being part of a tract supposed to contain two thousand nine hundred and five arpents originally granted under the authority aforesaid, by the lieutenant-governor for the time being, to Antoine Reilhe and Madame Anne Veuve Campe, of which the portion of the said Antoine Reilhe, after partition duly made, was by regular conveyance derived from him by the aforesaid Gregoire Sarpy, both of which said tracts of land were conveyed by Bernard Pratte and Emilie Labadie Pratte, August Chouteau and Sophie Labadie Chouteau, John Little and Marie Antoinette Little, Sylvester Labadie and Victoire Gratiot Labadie, and Gregoire Sarpy and Pelagie Labadie Sarpy, heirs of Madame Pelagie Chouteau Veuve Labadie, to the said Wilson P. Hunt, by deed bearing date the twenty-ninth day of August, one thousand eight hundred and seventeen, together with all and singular the rights, members and appurtenances thereto belonging, or in anywise incident or appertaining, and the reversion or reversions, remainder or remainders,
50 rents, issues, and profits thereto, to have and to hold the said
parcels or tracts of land unto the said John Jacob Astor, his heirs and assigns forever: Provided always, and it is the true intent and meaning of these presents, that if the said Wilson P. Hunt, his heirs, executors or administrators shall well and truly pay or cause to be paid to the said John Jacob Astor the several sums of money before mentioned, according to the terms of the agreement aforesaid, then and from thenceforth these presents shall cease and determine, and to be utterly null and void, anything herein contained to the contrary thereof in anywise notwithstanding; and it is covenanted and agreed by and between the parties to these presents that unti*l*l default shall be made in payment of the aforesaid sums of money, or either of them, and interest thereon, as aforesaid, it shall and may be lawful for the said Wilson P. Hunt peaceably and quietly to hold, use, occupy, possess, and enjoy, all and singular, the premises above granted and conveyed, and every part thereof, with the appurtenances, and to have, receive the rents, issues, and profits thereof, to his own particular use and behoof, anything herein contained to the contrary thereof in anywise notwithstanding.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written, (the 4th February, 1819.)

WILSON P. HUNT. [SEAL.]

Sealed and delivered in presence of—
WM. HARPER.
JOSEPH PHLLIPSON.

TERRITORY OF MISSOURI,
County of St. Louis, ss:

Be-it remembered that on this fourth day of February, in the forty-third year of the Independence of the United States of America, (a'o D'ni, 1819,) before me, Francis M. Guyo*l*, personally appeared Wilson Hunt, well known to me as the person described in th*is* foregoing
51 instrument, and the said Wilson Hunt acknowledged to me it was
his act and deed, hand and seal, for the purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed my seal, at St. Louis, on the date in this behalf above written.

F. M. GUYO*L*, *J. P.* [L. S.]

Recorded February 4, 1819.

A. GAMBLE, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned, recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing, executed by Wilson P. Hunt, together with the certificate of acknowledgment thereof, as the same remain on record in my office, in book "H," page 189.

Witness my hand and official seal this 24th day of September, 1873.

[SEAL.] W. C. KENNETT,
Recorder.

[Here follows map, marked page 51.]

Deed of Hunt to Astor, Nov. 7, 1836.

Deed of Hunt to Astor.

Whereas I, Wilson P. Hunt, of the city of St. Louis, in the State of Missouri, executed a certain mortgage to John Jacob Astor, of the city of New York, dated the fourth day of February, in the year of our Lord eighteen hundred and nineteen, upon the two tracts of land hereinafter first named, to secure to said Astor the payment of ten thousand dollars with interest as therein named; and whereas, on the fifth day of March, in the year eighteen hundred and twenty-five, I executed to said Astor another mortgage, upon the several tracts of land hereinafter mentioned and described, to secure to said Astor the payment of the sum of ten thousand nine hundred and seventy-one dollars, with interest, as therein
52 stated, the first of which said mortgages is recorded in St. Louis County, in book H, p. 189, and the other is recorded in the same county, in book M, page 238; and whereas the said Astor has agreed to receive the absolute conveyance of the property embraced in said mortgages in full satisfaction and discharge of whatever may be due on account of said mortgages, and the debt therein specified: Now, therefore, in consideration of the premises, and of one dollar to me in hand paid by said Astor at the ensealing and delivery hereof, the receipt of which is hereby acknowledged, I, the said Wilson P. Hunt and Anna L., my wife, do hereby grant, sell, alien, enfeoff, confirm, release, and convey unto said John Jacob Astor the following-described tracts of land lying in the county of St. Louis, in the State of Missouri, to wit, a tract of land granted to Gregoire Sarpy, under the Spanish government, by Charles Dehault Delassus, lieutenant-governor, by concession bearing date the twenty-eighth day of October in the year one thousand eight hundred and two, and by a plat here represented in accordance with the field-notes thereof on file in the office of the surveyor of the United States lands in Illinois and Missouri, to wit: Beginning at a stone, Eugene Alvares' upper corner, on the right bank of the river Des Peres, from which a blue ash 9 inches in diameter bears N. 14° E. 34 links, and sycamore 18 inches diameter bears N. 65° E. 31 links; thence S. 36° W. 52 chains, with Alvares' line to a stone corner; thence N. 83½° W. 147 chains 65 links, to a stone corner; thence S. 6½° W. 33 chains 50 links, to a post corner, from which a B. oak 10 inches diameter bears S. 25° E. 30 links, and a W. O. 6 inches diameter N. 11° W. 58 links; thence N. 83½° W. 54 chains 60 links, to a hickory
53 corner; thence N. 6½°, 30 chains 85 links a B. O. 12 inches diameter, 289 chains, to a post corner on the right bank of river Des Peres, from which an elm 10 inches diameter bears S. 52 E. 39 links, and an elm 8 inches diameter bears S. 43° W. 77 links, & a B.

walnut 18 inches diameter bears N. 82° W. 16 links; thence down said river, with the meanders thereof, to Charles Gratiot's line, and thence with C. Gratiot's line S. 8° 40′ W. 32 chains 60 links, to his corner post, from which a B. jack 6 inches diameter bears S. 7° E. 73 links, and a B. J. 6 inches diameter bears S. 32° E. 95 links; thence S. 83° E. 38 chains 50 links, with C. Gratiot's line to the river Des Peres, and thence down the river on the right bank with the meanders thereof to the place of beginning; supposed to contain four thousand and two arpens, more or less; also another tract of land, being the eastern part of a larger tract originally granted under the Spanish government to Antoine Reilhe and Madame Anne Veuve Camp by a concession, and supposed to contain 2,905 arpens, thirty-six perches, forty feet, and six inches; the *the* portion whereof which is herein conveyed was formerly allotted to Gregoire Sarpy, on a division of the original tract between him, claiming under said Reilhe, and the said Anne Camp, as represented by the plat thereon and described in the field-notes of a survey made by Richard Holiday, to wit: Beginning at a stone on the left bank of the aforesaid river Des Peres, from which an elm 8 inches diameter bears N. 54° W. 33 links, and a white oak 15 inches diameter
bears S. 10° W. 31 links; thence N. 35° E. 86 chains 68 links
54 to a stone corner from which a post oak 15 inches in diame-
ter bears S. 84½° W. 25 links, and a black oak, 6 inches in diameter, bears N. 15½° W. 34 links; thence N. 17° E. 98 chains 32 links to a stone corner, from which a black oak, 12 inches diameter, bears N. 51° W. 20 links, and a post-oak, 7 inches diameter, bears N. 84° E. 29 links; thence S. 69° W. 28 chains 58 links to a stone corner of C. Gratiot's land at the edge of a pond; thence N. 83° 10′ W. 86 chains 70 links, with C. Gratiot's line to a stone corner, from which a post-oak, 15 inches diameter, bears S. 20½° E. 35 links, and a post-oak, 16″ diameter, bears S. 77° E. 84 links; a post-oak, 12 inches diameter, bears N. 10° E. 23 links, and a post-oak, 12 inches diameter, bears N. 53° E. 13 links; thence S. 7° 50′ W., along the original division line, as run and marked between the said Anne Camp and the said Sarpy, 131 chains 50 links to a stone corner on the left bank of the aforesaid river Des Peres, at the mouth of a spring brook, from which stone a cottonwood, 18 inches in diameter, bears S. 55½° E. 33 links; and thence down the river on the left bank, with the meanders thereof, to the place of beginning, and supposed to contain one thousand six hundred and thirty-two arpents, forty-eight perches, one hundred and five feet and nine inches, more or less; the two above granted and sold tracts being the same that were conveyed to said Wilson P. Hunt by Bernard Pratte and wife, Sylvester Labadie and wife, and other heirs of the Widow Labbadie, by deed dated the twenty-ninth day of August, eighteen hundred and seventeen, recored in book F, pages 381, 2, & 3. Also frac-
tional section six, in township forty-four north, of range seven east,
55 containing forty-six acres and fifty-five hundredths of an acre;
also fractional section thirty-one, in township forty-five north, of range seven east, containing twenty-five acres and ninety-five hundredths of an acre. To have and to hold the tracts of land herein granted and sold, and all houses, buildings, and improvements thereon, and all rights, privileges, and appurtenances thereto belonging, unto him, the said John Jacob Astor, his heirs and assigns forever, for his and their own benefit and behoof; and I do hereby, for myself, my heirs, executors, and administrators, covenant with said Astor, his heirs and assigns, that I will forever warrant and defend the said tracts of land herein sold and conveyed, and each of them and every part and parcel thereof, unto him,

said Astor, his heirs and assigns, against all persons lawfully claiming or to claim the same, or any interest therein, in law or equity, by, through, or under me.

In testimony whereof I, the said Wilson P. Hunt and Anne L. Hunt, my wife, have hereunto set our hands and seals this seventh day of November, in the year of our Lord eighteen hundred & thirty-six.

WILSON P. HUNT. [SEAL.]
ANNE LUCUS HUNT. [SEAL.]

Signed, sealed, and delivered in presence of—
D. HOUGH.
F. PROVENCHERE.

STATE OF MISSOURI,
St. Louis County, ss:

Be it remembered that, on this seventh day of November, eighteen hundred and thirty-six, before me, the undersigned, justice of the peace, within and for the county aforesaid, appeared Wilson P. Hunt and Anne L., his wife, both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the said instrument to be their act and
56 deed for the purposes therein mentioned, she, the said Anne L.,
being by me made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same and relenquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband. Given under my hand the day and year aforesaid.

DANIEL HOUGH,
Justice of the Peace, County of St. Louis.

Filed for record Jan'y 30, 1837; recorded Feb'y 27, 1837.

JNO. RULAND,
Recorder.

STATE OF MISSOURI,
County of St. Louis :

I, the undersigned recorder for said county, certify the foregoing plat, deed, and acknowledgment to be a true copy from book B, page 193, in my office.

Witness my hand and official seal this 19th day of Septbr., 1873.

[SEAL.] W. C. KENNETT,
Recorder.
By JAMES P. WILTON, *Dy.*

Deed of Astor to McKenzie, July 20, 1840.

Deed of Astor to McKenzie.

This indenture, made the twentieth day of July, in the year of our Lord one thousand eight hundred and forty, between John Jacob Astor, of the city of New York, merchant, of the first part, and Kenneth McKenzie, of St. Louis, in the State of Missouri, of the second part, witnesseth, that the party of the first part, in consideration of twenty-three thousand three hundred and seventy-five dollars, (four thousand whereof is paid by the said Ken'eth McKenzie to the said party of the first part, the receipt whereof is hereby acknowledged, and the residue

whereof is secured to be paid by the bond of the said party of
56 the second part, and a mortgage of the lands hereinafter
described as granted, or so intended to be, bearing even date with
these presents, and delivered simultaneously with these presents,) hath
granted, bargained, sold, conveyed, and confirmed, and by these presents
doth grant, bargain, sell, convey, and confirm, unto the party of
the second part, and his heirs and assigns forever, all those lands of
the party of the first part, now held by him under a conveyance from
Wilson P. Hunt, lying near St. Louis, in Missouri, and together containing,
according to surveys recently made, and agreed on by both parties
to be correct, four thousand six hundred and seventy-five acres, and
being in two parcels, one lying north of the river Des Peres, the other
on the south of the said river, one of which parcels, taken by itself, is
bounded as follows: One tract situate on the north of the river Des
Peres, and being part of a tract of twenty-nine hundred and five arpents,
fifty-six poles, and forty feet superfic*eis*, granted to Antoine Reilhe and
Ann V. Camp, and the tract now granted, bounded as follows: Beginning
at a stone, marked A, being the northwesterly corner of the tract
now described, being the southwesterly corner of a tract, now or late of
W. P. Hunt, of two hundred and ninety-two acres and twenty-one
hundredths, and standing in the division line between the tract now described
and a tract now or late of Payne & Clark, and from the said
stone, marked A, running south eighty-two degrees thirty-five minutes
east one hundred and four chains fifty links to a stone marked B; thence
south seventeen degrees west fifty-nine chains fourteen links to a stone
marked C, from which a post-oak four inches in diamet*re* bears south
58 eighty-five degrees west twenty-five links, and a red oak seven
inches in diameter bears north fifteen degrees, west thirty-three
links distant; thence south thirty-five degrees forty minutes west eighty-six
chains six links, to a stone marked D, on the left or north bank of the
river Des Peres, from which stone a white oak twenty-five inches diamet*re*
bears north seventeen degrees east eighty links and a white
oak thirty inches diamet*re* bears south thirty-one degrees west four
links distant, and a spring bears north fifty degrees west sixty-five links
distant; thence meander up and with the left bank of the said river south
eighty-eight degrees thirty minutes west one chain fifty-five links, cross
a branch twelve links wide, coming from the northward and running
into the river Des Peres twenty links south of this place, in all this
course two chains ten links; north eighty-two degrees west one chain
seventy-five links; north eighty-six degrees west one chain ninety links;
north eighty-one degrees fifteen minutes west one chain ninety links;
north sixty-six degrees west one chain seventy links; north fifty-eight
degrees forty-five minutes west five chains south eighty-three degrees
forty five minutes west two chains twenty links, south fifty-two
degrees west two chains sixty links, south thirty degrees thirty minutes
west three chains, south eighteen degrees west three chains thirty
links, south twenty-two degrees fifteen minutes west five chains ninety
links, south fifty degrees fifteen minutes west one chain eighty links,
south seventy-one degrees thirty minutes west one chain twenty links,
north sixty-five degrees fifteen minutes west two chains ten links,
59 north forty-four degrees thirty minutes west four chains forty
links from this point. The lower corner-stone of the land of the
said J. J. Astor, south of the river Des Peres, bears south forty degrees
fifteen minutes west one chain fifty-nine links distant; continuing the
meander north forty-four degrees west two chains fifty links; north
forty-eight degrees thirty minutes west two chains forty links, (at one

chain fifty-nine links on this course in the east edge of the bridge;) north thirty-two degrees thirty minutes west one chain; north forty-six degrees west one chain thirty links; north fifty-one degrees forty-five minutes west one chain thirty links; north twenty-eight degrees thirty minutes west one chain eighty links, (at eighty-four links on this course is the southeast corner of Sarpy's stone mill-house;) north one chain thirty-six links; north sixteen degrees forty-five minutes east two chains fifty links; north three degrees east two chains seventy links; north sixty-one degrees fifteen minutes west two chains forty links; north seventy one degrees west three chains forty links; north fifty-nine degrees west one chain seventy links; north fifty degrees west two chains twenty links; north forty-nine degrees forty-five minutes west two chains; north fifty-four degrees west two chains fifty links; north forty-three degrees thirty minutes west two chains; north three degrees east one chain forty links; north fifty-six degrees thirty minutes east two chains ten links; north seventy-one degrees thirty minutes east four chains fifty links; north twenty-four degrees east two chains twenty links; north thirty-six degrees west two chains thirty links; north fifty-one degrees fifteen minutes west three chains thirty links; north fourteen degrees west two
chains thirty links; north thirteen degrees west two chains ninety
60 links; north eighteen degrees thirty minutes west four chains twenty
links; north fifty-three degrees west two chains; north eighty-one degrees thirty minutes west one chain to the mouth of a branch; thence north eight degrees east one hundred and three chains; seventy nine links to the place of beginning in which courses from B to C, from C to D, and from the mouth of the branch last mentioned to the place of beginning there are several stones set at varying distances, marking the said boundary lines, containing eleven hundred and forty-five acres and eighty-six hundredths of an acre, according to a survey and computation made by Joseph C. Brown. Also another tract of land south of the river Des Peres, bounded as follows: Beginning at a stone marked G, on the south of the river Des Peres (being the lower corner-stone of the lands of the said J. J. Astor, south of the river Des Peres, referred to in the preceeding description of the tract above described, thence meandering up the river Des Peres, and opposite to the tract above described, north thirty degrees west one chain eighty-six links; north fifty-two degrees fifteen minutes west two chains thirty-five links; north sixty-eight degrees fifteen minutes west one chain twenty-seven links; thence north fifty-seven degrees forty-five minutes west two chains; north thirty-two degrees thirty minutes west three chains fifty links; north four degrees west two chains sixty-six links; north fifteen degrees fifteen minutes east three chains fifty links; north nineteen degrees thirty minutes west one chain twenty-six links; north sixty-nine degrees west four chains; north sixty-five degrees west one chain twenty-four
links; north fifty-four degrees forty-five minutes, west two chains
61 fifteen links; north forty one degrees forty-five minutes west two
chains fifty links, north fifty-one degrees west four chains; north thirty-seven degrees fifteen minutes west one chain seventy-eight links; north two degrees forty-five minutes west two chains fifty links; north forty-one degrees thirty minutes east one chain sixty-two links; north sixty-four degrees forty-five minutes east three chains twenty-eight links; thence north seventy degrees fifteen minutes east two chains fifty-eight links, north nine degrees thirty minutes east one chain; north fifty-eight degrees forty-five minutes west two chains fifty links; north forty-one degrees forty-five minutes west one chain eighty links; north fifteen degrees west seven chains fifteen links; north twenty degrees

fifteen minutes west two chains fifty-six links; north forty-eight degrees
west one chain thirty links, from which the point commencing the last
course of the preceding tract at the mouth of a branch bears north nine
degrees east one hundred and nine links; thence south seventy-eight
degrees forty-five minutes west one chain fifty links; south thirty-four
degrees fifteen minutes west one chain fifty links; south one chain fifty-eight
links; south twelve degrees fifteen minutes east four chains thirty
links; south seven degrees west two chains forty links; south sixty-two
degrees west three chains fifty-seven links; north eighty-nine degrees
west two chains fifty links; north sixty-three degrees forty-five minutes
west two chains seventy links; north fifty-five degrees forty-five minutes
west two chains; north forty-six degrees fifteen minutes west
two chains eighty links; north forty-nine degrees thirty minutes
west one chain thirty links; north forty-nine degrees west one
62 chain forty links; north forty-five degrees thirty minutes west
one chain thirty links; north thirty-five degrees fifteen minutes
west one chain ten links; north twenty-one degrees forty-five minutes
west two chains ninety links; north twenty-eight degrees fifteen minutes
west two chains thirty links; north twenty-one degrees fifteen
minutes west one chain ninety links; north thirty-two degrees forty-five
minutes west two chains sixty links; north thirty-six degrees
west six chains fifty links; north forty-three degrees thirty minutes
west two chains; north forty-four degrees fifteen minutes west one chain
50 links; north fifty degrees thirty minutes west one chain ninety links;
north fifty-four degrees forty-five minutes west two chains ten links;
north sixty-six degrees forty-five minutes west two chains sixty links;
north sixty-two degrees west three chains twenty links; north forty-two
degrees and fifteen minutes west four chains and eighty links; north
fifteen degrees west one chain and seventy links; north twenty-eight
degrees east two chains; north fifty-three degrees fifteen minutes east
two chains twenty links; north sixty-eight degrees forty-five minutes
east three chains seventy links; north fifty-two degrees east two chains
forty links; north twenty degrees east one chain eighty links; north
two degrees thirty minutes west one chain fifty links; north twenty-one
degrees thirty minutes west two chains forty links; north thirty-one
degrees fifteen minutes west five chains forty links; south eighty-six
degrees thirty minutes west one chain thirty links; west four chains
twenty links; north forty-seven degrees west two chains four links;
north twenty-one degrees thirty minutes west four chains ten
63 links; north sixteen degrees west three chains forty links; north
seventy-two degrees fifteen minutes west one chain thirty-five
links; south fifty-two degrees west three chains ninety links; south
sixty-eight degrees fifteen minutes west one chain seventy links; west
one chain eighty-nine links; north forty-four degrees fifteen minutes
west one chain eighty-five links; north four degrees forty-five minutes
east six chains thirty links; north seventy degrees forty-five minutes
west three chains thirty links; north three chains sixty-three links;
north five degrees fifteen minutes west two chains seventy links; north
nine degrees fifteen minutes west one chain forty-five links; north
eighty-two degrees thirty minutes west one chain seventy-five links;
south seventy-five degrees fifteen minutes west two chains fifteen links;
south seventy-seven degrees fifty-five minutes west three chains fifty
links; north eighty-nine degrees fifteen minutes west two chains seventy
links; north sixty-eight degrees thirty minutes west four chains; north
thirty degrees fifteen minutes west three chains; north seventeen degrees
east one chain sixteen links; north three degrees and forty-five

minutes west fifty links; north seventy degrees east two chains ninety links; south eighty-seven degrees forty-five minutes east three chains; south eighty-three degrees thirty minutes east two chains ninety links; north seventy-seven degrees fifteen minutes east three chains twenty-three links; north fifty degrees forty-five minutes east one chain sixty-three links; north three degrees east two chains eighty links; north eleven degrees fifteen minutes west three chains twenty links; north eight
64 degrees west three chains twenty links; north sixteen degrees forty-
five minutes west two chains sixty links; north forty-four degrees forty-five minutes west two chains; south eighty-four degrees west one chain ninety links; south seventy-six degrees forty-five minutes west three chains fifty-seven links; north sixty-four degrees west three chains twenty links; north thirty-nine degrees fifteen minutes west one chain ninety links; north ten degrees thirty minutes west three chains north fifteen degrees forty-five minutes east two chains ten links; north twenty-nine degrees forty-five minutes east two chains ten links; north six degrees forty-five minutes west one chain seventy links; north nine degrees fifteen minutes west one chain ninety links; north three degrees forty-five minutes west two chains ten links; north two chains twenty-five links; north one degree thirty minutes west five chains eighty links; north four degrees west two chains eighty links; north twenty-seven degrees west one chain seventy-seven links; south eighty-eight degrees west three chains fifty links; south eighty-three degrees forty-five minutes west two chains seventy links; north fifty-six degrees thirty minutes west two chains; north twenty-two degrees forty-five minutes west two chains seventy links; north twenty-four degrees west three chains ten links; north thirty-nine degrees fifteen minutes west two chains; north forty-eight degrees thirty minutes west three chains seventy-five links; north thirty-five degrees thirty minutes west three
65 chains seventy links; north one chain ninety links; north four de-
grees thirty minutes west four chains forty links; north seventy-two degrees thirty minutes west two chains eighty links; north seventy-six degrees west three chains sixty links; north sixty-six degrees fifteen minutes west two chains ten links; north twenty-one degrees thirty minutes west two chains fifty links; north thirty-three degrees forty-five minutes east two chains ten links; north forty-six degrees east three chains north four degrees east three chains twenty links; north four degrees west one chain ninety links; north one degree thirty minutes west one chain twelve links to a post (by the surveyor designated as H, on Gratiot's line, two chains fifteen links, north eighty-two degrees fifteen minutes west from the post S. N., east of the creek on said line;) thence from the said post H, north eighty-two degrees fifteen minutes west thirty-seven chains seventy-two links to a stone designated by the letter I; thence north nine degrees east twenty-eight chains seventy-three links to Gratiot's corner, and continuing this course the distance from I of thirty-two chains thirty links; the corner thereof, this tract of land striking the west fork of the river Des Peres; thence up the west fork of the river Des Peres, as it meanders, north sixty-one degrees fifteen minutes west three chains ten links; north fifty-one degrees west two chains eighty links; north eighty degrees thirty minutes east two chains ten links; north thirty-three degrees thirty minutes east three chains seventy links; north one degree fifteen minutes west one chain eighty links; north fifty-three degrees fifteen minutes west three chains thirty links; south eighty-seven
66 degrees west one chain fifty links; south seventy-three degrees
west one chain fifty links; south fifty-nine degrees west one chain

sixty links; south sixty-five degrees thirty minutes west ninety links; south eighty-four degrees thirty minutes west one chain north sixty-six degrees fifteen minutes west two chains; north seventy-eight degrees thirty minutes west one chain ninety links; north eighty-seven degrees west three chains fifty links; north seventy-six degrees west one chain eighty links; north eighty-three degrees thirty minutes west two chains twenty links; north eighty-one degrees fifteen minutes west four chains twenty links; north seventy-five degrees thirty minutes west two chains thirty links; north seventy-three degrees forty-five minutes west one chain fifty links; north seventy-two degrees fifteen minutes west one chain eighty links; north seventy-six degrees west one chain twenty links; north seventy-one degrees west one chain seventy links; north fifty-nine degrees west one chain fifty links; north thirteen degrees west one chain six links to the corner a stone marked with the letter M; thence south seven degrees thirty minutes west one hundred & ninety-three chains eleven links to the corner, being a stone marked P, and a hickory tree; thence south eighty-two degrees thirty minutes east fifty-five chains fifty-two links to the corner, which is a stone designated by the letter Q; thence north seven degrees thirty minutes east thirty-four chains nine links to another corner of this tract, which is a stone designated by the letter R; thence south eighty two degrees
thirty minutes east one hundred and twenty-nine chains seventy
67 links to another corner of this tract, a stone designated by the
letter S; thence north thirty-six degrees ten minutes east fifty-two chains eighteen links to the place of beginning, at the stone marked G, at the river Des Peres, containing three thousand five hundred and twenty-nine acres and sixty-eight hundredths of an acre, together with all and singular the hereditaments and appurtenances unto the said granted premises belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, property, possession, claim and demand of the party of the first part of, in, and to the said premises, and every part and parcel thereof, and their appurtenances, to have and to hold the same unto the party of the second part, his heirs, executors, administrators, and assigns forever; and the party of the first part for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the said party of the second part, his heirs and assigns, that he, the party of the first part, is well seized of an absolute estate in fee-simple of and in the said premises granted as aforesaid, or so mentioned to be, and that the same are free and clear of all, and all manner of incumbrances, and that the party of the first part, his heirs, executors, and administrators, the said granted premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against him, the party of the first part, his heirs and assigns, and all other persons lawfully claiming the same, shall and will warrant and by these presents forever defend.

In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written. Sealed and delivered in the presence of the words "Ann," 23d line, 1 page,
"links," third line, second page, written on erazure, and the words
68 "fifteen minutes," line 3, page 4, and words "north forty-nine
degrees thirty minutes west one chain thirty links," line 13, page 4, and words "against him, the party of the first part, his heirs and assigns," line 4, page 8, interlined before execution—

GEO. B. SMITH. J. J. ASTOR. [SEAL.]

STATE OF NEW YORK,
City & County of New York, ss:

Be it remembered that, on this 24th day of September, in the year of our Lord one thousand eight hundred and forty, before me, the undersigned, clerk of the city and county of New York, and also clerk of the court of common pleas for the said city and county, personally appeared George B. Smith, personally known to me to be the person whose name is subscibed to the foregoing instrument of writing as a witness thereto, and being by me duly sworn, on his oath stated that he is well acquainted with John Jacob Astor, whose name is subscribed to said instrument as a party, and that he, the said Astor, is the real person who executed the same; that he, said Smith, was present and saw said Astor sign and seal the said instrument, and at the same time acknowledge it to be his act and deed for the purposes therein mentioned, and deliver the same; and that he, said Smith, did thereupon, at said Astor's request, subscribe the same as a witness thereto. In testimony whereof I, Joseph Hozie, clerk as aforesaid, have hereto subscribed my name, and affixed the seal of said court the day and year above written.

[SEAL.] JOSEPH HOXIE, *Clk.*

Filed for record October 31st, 1840, & recorded December 7th, 1840.
JN. RULAND, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for the county aforesaid, certify the foregoing to be a true copy of an instrument in writing, executed by John Jacob Astor, together with the certificate of acknowledgement
69 thereof, as the same remains on record in my office, in book O^2, page 376.

Witness my hand and official seal this 19th day of September, 1873.

[SEAL.] W. C. KENNETT, *Recorder.*
By JAMES P. WILTON, *Dy.*

It was admitted that the defendant has the title of McKenzie, and that he and those under whom he claims have had open, notorious, continuous, and uninterrupted adverse possession of the premises in dispute for more than twenty years prior to the commencement of this suit.

The plat of survey by Cozzens, as follows, indicates by red lines the boundaries of the survey by Soulard, as by him described in his notes and figurative plat of the survey for Sarpy, on the Des Peres. Said Cozzens, in surveying and tracing the lines of said Soulard survey, found evidences of the old Soulard line, on the west, also the island and white-walnut on the northwest corner, from which it appears that, by taking said Soulard's line on the west and south and following the meanders of the Des Peres River, there were included in it $2,179\frac{61}{100}$ acres, or $2,563\frac{15}{100}$ arpens only. The yellow lines correspond with U. S. survey No. 1953.

(Here follows map marked page 69.)

70 To make 4,002 arpens, which Soulard says were included in his survey, if the river Des Peres is made the eastward boundary, said plat of survey by Cozzens would require the west line to be as marked on said plat by north and south corners "4,002" line.

If the Soulard survey has for its true west line that marked in red on the Cozzens plat, then a part of the defendant's possessions are within said survey, as indicated on said plat, and part are westward thereof, and outside of said Soulard survey. If, however, 4,002 arpens are taken with the Des Peres as the eastward boundary, then all of defendant's possessions are within the Soulard survey.

Agreements and stipulations of counsel.

In the circuit court of the United States for the eastern district of Missouri. Sept. term, 1873.

JAMES L. D. MORRISON, ADELE S. MORRISON
his wife, & Edward Abend, trustee, pl'ffs.,
vs.
WILLIAM H. BENTON, DEFENDANT.

In the above-entitled cause, in order to facilitate a hearing with as little inconvenience to the parties as possible, it is stipulated and agreed as follows, between the parties to the above suit, through their respective counsel, to wit:

First. That Gregoire Sarpy died in Saint Louis, in the year 1824, leaving three sons as his heirs, as follows, John B. Sarpy, Peter A. Sarpy, and Thomas Sarpy.

Second. That on the 11th day of August, A. D. 1842, both the said John B. Sarpy & Peter A. Sarpy were living.

Third. That afterwards, and before the first day of Feebruary,
71 A. D. 1869, each of them had departed this life, having by last
will and testament devised their entire estate, real and personal, to Virginia, John R., and Adele S., sole children of John B. Sarpy, at the time of his death, and nieces and nephew of Peter A. Sarpy, at his death.

Fourth. That the said John R. Sarpy died single and without issue, after the death of his said father and uncle, devising by last will his entire estate to Virginia S. Berthold, since intermarried with Armand Penguet, and to Adele S. Morrison, wife of James L. D. Morrison.

Fifth. That the said Armand Penguet, and Virginia S. Penguet have conveyed all the interest and title of the said Virginia in and to survey No. 1953 to James L. D. Morrison before the commencement of this suit.

Sixth. That the said Edward Abend is a trustee, succeeding under the agreements of a certain marriage contract between James L. D. Morrison and Adele S. Morrison, his wife, and claims no beneficial interest in this suit in his own right.

Seventh. That at the time of the commencement of this suit the said William H. Benton was in possession of, and claimed title to, and still is in possession, under claim of title of $779\frac{25}{100}$ acres of the land sued for and known upon the recorded plat of the McKenzie subdivision of said survey, as lots numbered 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 36, 37, 38, & 40, containing in the aggregate $779\frac{25}{100}$ acres, which said lots of said subdivision are within the out-boundary lines of said survey 1953, and said Benton claims to possess and own said land under a sale, on executions against Gregorie Sarpy, of the right, title, and interest of Gregoire Sarpy in and to a certain tract of land, described in the sheriff's deed therefor, (made on the 9th day of
72 March 1808,) and evidenced by the deed of Jeremiah Connor,
sheriff of St. Louis County, dated June 29th, 1808, to Pierre

Chouteau, which deed was duly recorded in the recorder's office of St. Louis County, August 28th, 1813, and a duly certified copy thereof may be read in evidence, if the original deed could be read in evidence, as duly executed without producing the judgments and executions therein recited; subject, however, to any legal objection or exception which may be taken by plaintiffs to the sufficiency of the execution or acknowledgment of said deed, or of such deed to pass title to the premises or any part thereof described in the plaintiff's petition.

Eighth. That said land so conveyed or attempted to be conveyed by Jeremiah Connor, sheriff, to Pierre Chouteau was by the said Pierre Chouteau and Lancier Chouteau, his wife, by deed dated June 30, 1808, and duly recorded August 28th, 1813, in the recorder's office of St. Louis County, conveyed or attempted to be conveyed to Madame Pelagie Chouteau, widow Labadie, and a duly certified copy of which deed may be read in evidence, if the original could be, without further proof of its execution subject to any and all legal exceptions which may be taken to the sufficiency of the execution or acknowledgement of said deed, or of said deed to pass title to the land or lands described in the plaintiffs petition.

It only being the intention of the parties in reference to this and the last-recited deed to waive all questions which might arise upon the judgments and executions and the sufficiency of the executions issuing thereon, upon which the right, title, and interest of the said Gregoire Sarpy in the lands described in said deed were sold.

73 Ninth. That Madame Pelagie Chouteau, widow Labadie, under whose heirs defendant claims title to the land in suit, died some time during the year 1813, leaving as her sole heirs four daughters and one son, viz, Emilia, who married Bernard Pratte, Sophia, who married August P. Chouteau, Antoinette, who married John Little, Pelagie, who maried Gregoire Sarpy, and Sylvester her son. The said Gregoire was the same person to whom the land was conceded by Delassus, lieutenant-governor, in 1802.

Tenth. That those are the same parties who executed their deed dated August 29th, 1817, to Wilson P. Hunt, which deed was recorded in the recorder's office of St. Louis County, Sept. 1, 1817, in book F, page 381, and under and through which deed the defendant also claims title to the land which he is in posession of as stated in his answer and in the petition mentioned by mesne conveyances, commencing with a deed dated November 7, 1836, from Wilson P. Hunt and wife, to John Jacob Astor, and it is admitted that all of the grantors in said deed died prior to February 1, 1869.

This admission on the part of plaintiffs, like the two last, shall not be held to bar or preclude them from objecting on the trial to the sufficiency of the execution or acknowledgment of said deed, or denying on the trial that said deed passed the title to the land in question, or any portion of it, or estop them from taking any legal exception as to the force and effect of said deed on the hearing, or its legal admissability from facts disclosed upon its face.

Eleventh. It is further agreed that the said Benton and the parties under
whom he claims title, and claims said land, have for more than
74 ten years next before the commencement of this suit been in the
actual, quiet, uninterrupted, continous possession of said lots of
land under claim of title thereto, adverse to all the world.

But nothing in this stipulation or admission shall be so construed as to estop the plaintiffs from maintaining and showing on the trial by evidence and the law, that as to the land in question the statute of limitations has not run as a bar against the said plaintiffs, or those under whom the plaintiffs claim title.

Twelfth. That if the plaintiffs are entitled to recover the whole or any portion of the land in survey No. 1953, possessed and claimed by the defendant, that the plaintiffs will be entitled as damages to one dollar, and that the monthly value of said premises recovered is fifty dollars.

Thirteenth. That the plaintiffs only claim title to an undivided two-thirds part of the land claimed and possessed by defendant in survey No. 1953, and every part and parcel thereof, and that if they are entitled to recover their said interest so claimed in said survey or any portion thereof that said interest is two-thirds thereof.

Fourteenth. That the admissions, agreements, and stipulations herein contained have been made and entered into to facilitate the trial of this cause upon its merits, and are not to be set up, plead, or relied upon as an estoppel or otherwise against either of the parties thereto in any other suit which may arise between them or their privies, but are to apply in this suit only in which they are agreed upon for the purposes aforesaid.

75 JAS. L. D. MORRISON,
For himself & as atty for his wife.
KRUM & PATRICK,
Attys. for Deft.

John B. Sarpy was born, lived, and died in Saint Louis.

Declaration of law by the court.

Upon the foregoing facts the court declares the law to be—

First. That the foregoing deed of Jeremiah Connor, sheriff, to Pierre Chouteau, dated June 29th, 1808, is inoperative as a conveyance, because it was not acknowledged as required by the laws then in force.

Second. Said deed is admissible in evidence as explanatory of the subsequent conveyances which expressly refer thereto.

Third. The deed of Bernard Pratte and others to Wilson P. Hunt, (including Gregoire Sarpy and wife among the grantors,) dated the 29th of August, 1817, was a confirmation by said Sarpy of the sale by Sheriff Connor in 1808 to Pierre Chouteau.

Fourth. The last-mentioned deed conveyed to said Hunt all the tracts of land therein described which had been previously confirmed, and also Sarpy's interest in all other tracts of land described therein, to which said Sarpy had a claim under concessions by the Spanish government.

Fifth. That by virtue of said last-mentioned conveyance the grantees under said Hunt to said land and claims, became the legal representatives of Gregoire Sarpy, as to the premises in dispute, through survey No. 1953, the patent certificate No. 1033, said act of Congress
76 approved August 11th, 1842, and the patent dated Feb. 1st, 1869, and said legal representatives acquired the title to all the tracts of land in said patent described.

Sixth. The title to the premises in dispute, thus acquired from the United States by said legal representatives, passed by operative and valid conveyances to the defendant.

Whereupon the court declares that the plaintiff is not entitled to recover, and orders judgment to be entered for defendant, with costs.

And afterwards, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in this cause on Saturday, the 29th day of November, A. D. 1873, to wit:

Writ of error allowed.—Bond filed.

JAMES L. D. MORRISON ET AL., PLAINTIFFS, *vs.* WILLIAM H. BENTON, DEFENDANT. } Petition.

This day come the plaintiffs, by their attorney, and present to the court a citation directed to said defendant, and a writ of error, and a bond with surety, duly executed as required by law; and said citation having been signed by the judge, the writ of error allowed, the bond is approved and ordered to be filed and made a part of the record herein.

The bond filed as aforesaid is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, James L. D. Morrison, as principal, and James O. Broadhead, as surety, are held and firmly bound unto William H. Benton in the full and just sum of five hundred dollars, to be paid to the said William H. Benton, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 29th day of November, in the year of our Lord one thousand eight hundred and seventy-three. 77

Whereas lately, at the September term, A. D. 1873, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between James L. D. Morrison, Julia A. A. S. Morrison, his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs, and William H. Benton, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William H. Benton, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said James L. D. Morrison, Julia A. A. S. Morrison his wife, and Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs as aforesaid, shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

JAS. L. D. MORRISON, [SEAL.]
Pr. SAML. N. HOLLIDAY, *his Atty.* [SEAL.]
JAMES O. BROADHEAD. [SEAL.]

Approved by—

SAMUEL TREAT, *Judge.*

78 UNITED STATES OF AMERICA:
Circuit Court for the Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of

James L. D. Morrison et al., plaintiffs, against William H. Benton, defendant, No. 154, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereto subscribe my name and affix the seal of said court at office in the city of St. Louis, in said district, this thirty-first day of December, in the year of our Lord eighteen hundred and seventy-three.

[SEAL.] AUSTIN DRAKE, *Clerk*,
By H. C. GEISBERG, *Deputy*.

(Indorsed:) # 154. United States circuit court eastern district of Missouri. James L. D. Morrison et. al., against William H. Benton Duly certified transcript of the record and proceedings in the above entitled cause.

(Indorsement on cover:) No. 140. James L. D. Morrison, Julia A. A. S. Morrison, his wife, & Edward Abend, trustee of said Julia A. A. S. Morrison, plaintiffs in error, vs. William H. Benton. E. Missouri, C. C. U. S. Filed 24th January, 1874.

SUPREME COURT OF THE UNITED STATES

No. 140.

JAS. L. D. MORRISON ET AL., PLFFS. IN ERROR, vs. W. H. BENTON.

STIPULATION OF COUNSEL AND ADDITION TO RECORD.—FILED 26TH JANUARY, 1876.

1 Know all men these presents, that whereas, I, William P. Hunt, of the city of St. Louis, and State of Missouri, am indebted to John Jacob Astor, of the city of New York, in the sum of ten thousand nine hundred and seventy-one dollars, which became due on the thirty-first day of December last, and whereas I am desirous of securing to said Astor the amount of said debt, with interest on the same: Now, therefore, in consideration of the premises, and of the sum of one dollar to me in hand paid, by the Astor at the ensealing and delivery hereof, I do hereby give, grant, bargain, sell, alien, release, and confirm unto the said John Jacob Astor the following tracts of land in St. Louis County, in the State of Missouri: that is to say, a tract of land lying on the south side of the river des Peres, and bounded as follows: beginning at Eugene Alrerez's upper corner on the south
2 bank of the river des Peres, at a stone, and running thence thirty-six degrees west eighty-two chains, thence north eighty-three and a half degrees, west one hundred and forty-seven chains sixty-five links, thence south six and a half degrees, west thirty-three chains fifty links, thence north eighty-three and a half degrees, west fifty-four ch's sixty links, thence north six and a half degrees east in a straight line, till it strikes the river des Peres, at a white walnut; thence down the river des Peres to the place of beginning, excepting, however, so much of a tract of land, lying on the south side of said river des Peres, as belongs to the heirs of the late Charles Gratiot, deceased, which said tract of land, hereby intended to be conveyed, is supposed to contain four thousand and two arpents, more or less; also that certain other tract of land lying on the said river des Peres, of one thousand six
3 hundred and thirty-two arpents forty-eight perches, being part of an original tract supposed to contain two thousand nine hundred and five arpents, granted originally under the Spanish government by the lieutenant for the time being, to Antoine Rielhe and Madam Ann Vieuve Campe, which said tract, hereby conveyed, is bounded as follows: beginning at a point on the north bank of said river des Peres, and running thence north, twenty-three degrees, east thirty arpents; thence south seventy-three degrees, west five arpents and three perches; thence west sixty-nine arpents and two perches; and thence south forty-nine arpents and six perches to a point on said

river, pursuing the line dividing the land allotted to one Gregoire Sarpy
from the land allotted to said Vieuve Camp, which allotment or
4 division was made under the Spanish authorities, the said
Gregoire Sarpy being then the owner of that portion of the
ground which had originally belonged to said Antoine Reilhe; which
two tracts of land above described and hereby intended to be conveyed,
were acquired by me, said Hunt, from the heirs of Madam Pelagie
Chouteau Viuve Labbadie, by deed dated the twenty-ninth day of
August, one thousand eight hundred and seventeen, and recorded in
St. Louis County in book F, page 381, and following, in which deed the
title to said tract of land is more particularly delineated; also the
tract of land is known and described as fractional section six, in township forty-four north, of range seven east, in the district of St. Louis,
and State of Mo., containing forty-six acres and fifty hundredths of an

5 And also that other tract of land known and described as
fractional section thirty-one, in township forty-five north, of
range 7 east, in the district and State aforesaid, containing twenty-five acres and ninety-five hundredths of an acre, which two last-mentioned tracts were conveyed to me, the said Hunt, by the United States, to have and to hold the said several tracts above described, with all the edifices thereon and with all the privileges, rights, and appurtenances thereto belonging or in any wise appertaining, unto him, the said John Jacob Astor, his heirs and assigns, forever. This deed is nevertheless subject to the following condition; that is to say, if the said Hunt shall well and truly pay, or my heirs, executors, and administrators, unto
the said John Jacob Astor, his certain attorney, executors,
6 administrators, or assigns, on or before the thirty-first day of
December next without failure, the said sum of ten thousand
nine hundred and seventy-one dollars, with interest on the same from the thirty-first day of December last, at the rate of seven per centum, *per centum*, then this deed shall be wholly null and void and of no effect, otherwise it shall be in full force and virtue; and I hereby agree that interest shall be computed on the said sum of money at the rate of seven per centum per annum, until it is paid and shall be considered as payable annually, at the city of New York, as long as said principal sum shall remain due or any part thereof. And further, that said principal sum shall be deemed due and payable at the same city.

7 In testimony whereof I, the said Wilson P. Hunt, have hereunto set my hand and seal this 5th day of March, in the year of our Lord one thousand eight hundred and twenty-five, the words "five" and "west," on the first page, and "the land," on the second page, having been first interlined.

Signed, sealed, and delivered in the presence of—

H. S. GEYER.
J. SPAULDING.

WILSON P. HUNT. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Personally appeared before me, a justice of the peace within and for the county of St. Louis, the above-named Wilson P. Hunt, known to me as the person who executed the foregoing instrument of writing, and acknowledged the same to be his act and deed, for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand & seal this 7th day of March, 1825.

J. V. GARNIER, *J. P.* [SEAL.]

8 Recorded 8th March, 1825.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI,
County of St, Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of an instrument in writing executed by Wilson P. Hunt, together with the acknowledgment and date of filing and recording thereof, as the same appear on record in my office, in book M, page 238.

Witness my hand and official seal this 24th day of December, A. D. eighteen hundred and seventy-two.

[SEAL.] W. C. KENNETT,
Recorder St. Louis County, Mo.

We, the undersigned, executors of the last will and testament of John Jacob Astor, dec'd, do hereby acknowledge to have received entire satisfaction of the mortgage executed by Wilson P. Hunt, and re-
9 corded on this and preceding pages, and we do forever release the premises conveyed thereby from all liens on account of said mortgage.

Witness our hands and seals the 27th day of February, 1851.

WILLIAM B. ASTOR, [SEAL.]
By JOHN R. SHAPLY,
Attorney in fact. [SEAL.]

Satisfied on page 239.

J. J. ASTOR,
By his attorney, JOHN R. SHAPLY.

For power of attorney see book S, No. 5, page 304.

S. D. BARLOW, *Recorder.*

Supreme Court U. S., Oct'r term, A. D. 1875.

JAS. L. D. MORRISON ET ALIA
vs.
WM. H. BENTON.

This certified copy of a mortgage from Wilson P. Hunt to Jno. J. Astor was in evidence before the U. S. cir. court, upon the hearing of the case of J. L. D. Morrison et al. vs. Wm. H. Benton, and is referred to in the deed from Wilson P. Hunt to J. J. Astor of 7th Nov'r, 1836.
10 Said deed and the other mortgage therein recited, dated 4th Febr'y, 1819, are set out in the finding of special facts, but, through an oversight of the court in making up record of facts found, this mortgage is not embodied in the record; and, as it is desirable that the case shall be heard by the Supreme Court on the entire merits, we agree that this mortgage shall be considered as embodied in the record.

J. L. D. MORRISON,
Atty. for Plffs.
JOHN M. KRUM,
Attys. for Deft.

Supreme Court of the United States.

October Term, A. D. 1875

JAMES L. D. MORRISON,
JULIA A. A. S. MORRISON,
EDWARD ABEND, *Trustee*,
vs.
WILLIAM H. BENTON.

Ejectment.

**Error to the Circuit Court of the United States,
Eastern District of Missouri.**

Brief and Argument

OF

JAMES L. D. MORRISON,

For Plaintiffs.

EJECTMENT
IN THE
# Supreme Court of the United States
FROM THE
Circuit Court of the United States, Eastern District of Missouri.

October Term, A. D. 1875.

JAMES L. D. MORRISON AND JULIA A. A. S. MORRISON, HIS WIFE, AND EDWARD ABEND, THEIR TRUSTEE,	*Pltffs. in Error.*
VS.	
WILLIAM H. BENTON, (SAME *vs.* JACKSON.)	*Deft. in Error.*

STATEMENT OF THE CASE.

1. On the 28th October, 1802, Charles D. Delassus, Spanish Lt.-Governor of Upper Louisiana, conceded to Gregoire Sarpy by an open concession 6000 arpents of land, upon his petition, "to be taken from along the River des Peres and in the woodland parts that belong to the domain of the King."

2. On the 18th March, 1803, in obedience to an order of the Governor, as contained in said concession, Soulard, Surveyor, surveyed and designated by courses, distances, corners and monuments upon the ground, and made a figurative plan of the same, a tract of land *part* of the said concession, upon the River des Peres about 8 miles from St. Louis, supposed to contain 4002 arpents and made the River des Peres the eastern boundary of said tract of land so surveyed by him. This was all

the land ever surveyed upon the River des Peres under the concession. The lines of this Spanish survey have been retraced by Couzzins according to the original figurative plan and is found to embrace but 2563 arpents This discrepancy arises probably from ignorance of the meanders of the River des Peres. Soulard in his return of this survey, says: "the said gentleman reserves to himself the faculty of choosing the compliment of his concession in one or more vacant portions of the royal domain."

3. On the 2nd January, 1804, another survey was made upon this concession by Soulard, twenty miles from St. Louis upon the river Merimack "in the woodland domains of the King," and designated and returned by a "figurative plan, and supposed to contain 1400 arpents, but, in fact, contains but 1040 arpents. No other survey upon the concession was ever made by the Spanish authorities, so it will be seen that 2497 arpents of the concession remained unlocated by survey, when the United States succeeded to the sovereignty of Upper Louisiana.

4. This claim for 6000 arpents was presented by Gregoire Sarpy, before the Board of Commissioners, under the act of 2nd March, 1805, and supplementary acts, and was by said Commissioners *rejected* on the 9th December, 1811.

5. Pending its examination before the Board, upon an execution issued against Gregoire Sarpy in 1808, the Sheriff of St. Louis County levied upon and sold "4002 arpents of land on the River des Peres being the same more or less," and "being a *part* of the quantity of 6000 arpents granted to said Sarpy, 28th October, 1802," and attempted to deed the same to Pierre Chouteau 29th June, 1808. This deed being acknowledged before a Justice of the Peace was *void* under the laws of Missouri then in force.

6. On the 30th June, 1808, Pierre Chouteau and wife by deed conveyed to Madame Pelagie Chouteau, Widow Labaddie, "just as I have acquired it from the Sheriff," "also another land of 4002 arpents also situated on the River des Peres; and another land of 1400 arpents situated on the river Merimack, the two last lands forming a *part* of a concession of 6000

arpents granted to said Gregoire Sarpy by Charles D. Delassus, on the 28th October, 1802.

7. By stipulation of the parties in the record it is agreed that Madame Labaddie died in the year 1813, intestate, leaving five heirs "viz": Emily L. intermarried with Bernard Pratte; Sophia intermarried with Auguste Chouteau; Maria Antoinette intermarried with John Little; Pelagie, intermarried with Gregoire Sarpy, and Sylvester Labaddie, her son, who inherited her estate; and that the plaintiff Julia A. A. S. Morrison is the grand-daughter of Gregoire Sarpy, and one of his three living heirs, and that the plaintiff James L. D. Morrison is the grantee of Virginia Sarpy Peugniet another of his grand-daughters and one of his three heirs,—and that the said Gregoire Sarpy and Pelagie his wife died before the commencement of this suit—the said Gregoire in the year 1824.

8. That on the 29th August, 1817, Gregoire Sarpy uniting with his wife and the other heirs of Madame Labaddie to sell the Spanish survey of 4002 arpents in controversy, as having descended to them upon the death of Madame Labaddie, executed to Wilson P. Hunt a deed for the survey upon the River des Peres, with covenants of warranty.

9. On February 2, 1816, Frederick Bates, who was recorder of land titles, made his report to the Commissioner of General Land Office inclosing tabular lists, 4 in number; in the 3rd this claim is reported as confirmed by the 1st section of the act of 1814, to the extent of a league square, which is 7056 arpents.

10. On the 7th May, 1818, Langham U. S. Surveyor for Missouri, surveyed as he says: "for Gregoire Sarpy who claims in his own right" 7056 arpents on the River des Peres, and designated the survey thereof on the township plats as survey No. 1953. This survey in fact contains 7361 arpents, as shown by the map of survey in record, page 37, and embraces a large portion of the original Spanish survey of 4002 arpents.

11. On the 13th September, 1825, a patent certificate was issued by the recorder of land titles at St. Louis, No. 1033, to Gregoire Sarpy for 7056 arpents as contained in Langham's survey No. 1953, and transmitted to Washington for a patent.

12. The land department refused to issue a patent on the certificate for the reasons assigned in the special finding of the court. Prominent amongst them is, that the survey "includes a large body of land confessedly not included in either of the surveys (Spanish) and therefore not confirmed to the claimant."

13. On the 11th August, 1842, Congress passed an act for the relief of Gregoire Sarpy, making it the *duty* of the General Land Office to issue a patent to Gregoire Sarpy *or* his legal representatives for the 7056 arpents in survey No. 1953.

14. Twenty-seven years after the passage of this act, viz: February 1, 1869, the land department fulfilled this *duty* and issued the patent in compliance with the law, to Gregoire Sarpy or his legal representatives. At the date of the patent, Sarpy had been dead nearly a half century and the stipulation filed, shows, that in 1869, he had but three heirs living as his legal representatives by descent.

The question below, and now in review before this Court is, as to the ownership of the lands in survey No. 1953 so patented.

The plaintiffs claiming that they own the whole survey No. 1953, except the one-fifth of the Spanish survey warranted by their ancestor with his co-tenants in commen, as heirs of Mad. Labaddie in the deed of 29th August, 1817, as shown by the figurative plat of said survey; as to which one-fifth they are estopped by rebutter. Defendants contend, that they with other claimants, through the deed of Mad. Labaddie's heirs, own the entire survey No. 1953, and that as such owners they are the legal representatives of Gregoire Sarpy within the patent. Survey 1953 commences about 8 miles from St. Louis and extends westwardly about four miles, and the tract sued for in the case against Jackson is on the extreme western line of the United States survey No. 1953, as will be seen by the plat.

For the plaintiffs in error, it is contended, that the record shows a clear *prima facie* case made out to two-thirds of survey No. 1953, through the patent of 1869, in them.

The defense must rest upon one of two grounds: either

1, Upon the bar of the statute of limitatious of Missouri: or,

2, Upon enurement of the title by patent to the defendants.

Either upon the doctrine of *relation*, carrying the title to them as assignees of the inceptive right by conveyance; or, upon the doctrine of *estoppel* on the after-acquired title, without such conveyance of the inceptive right.

No other defense has been urged as possible, and this upon the assumption that the patent of 1869, vested the only legal title which ever passed from the Government, directly in Gregoire Sarpy—whilst the plaintiffs insist the title by patent being in the alternative, "*or* his legal representatives," they as heirs are congressional grantees, through act of Congress of 1842 and subsequent patent in obedience thereto.

I. THE STATUTE OF LIMITATIONS.

The statute of limitations can be a defense only upon the theory that there was a valid confirmation either by the Act of Congress of the 12th of April, 1814 (3 U. S. Stat. 121), or by the Act of Congress of the 29th of April, 1816 (3 U. S. Stat. 328), and further that words of present grant in the act operated upon the United States Survey, 1953, at its date (1818), or when recorded (1825), to pass the title in fee out of the United States, and vest it in Gregoire Sarpy, or his legal representatives as of that date, or as of the date of the act (by relation back), as being thus equivalent to a patent of that date.

This theory cannot prevail, and for two reasons:

1. That there was no valid confirmation of this claim under either of those Acts of Congress; and

2. That even if there were a confirmation, there were no words of present grant in the act that could have such operation. Land in survey No. 1953, was never severed by any survey from the public domain until two years after the act of 1816 was passed.

(I.) There was no valid confirmation:

a. Not under the act of 1814 (3 U. S. Stat. 121), since this claim was not one "embraced in the report of the commissioners," (*i. e.* the report of the old Board, dated January 20, 1812, the only report made) as a claim which in their opinion, ought to be confirmed under any circumstances, though it was embraced therein as one *rejected*, and so "*decided upon*;" and therefore it did not come within the jurisdiction of the Recorder of Land Titles as successor of the old Board, under the Act of Congress of the 13th June, 1812, (§§ 3, 7, and 8), giving the jurisdiction, which by the terms of the act extended only to claims "*heretofore filed, but not decided on by the commissioners.*" 2 U. S. Stat. 751 ; Strother vs. Lucas, 12 Pet.

b. Because it did not appear by that report to have had "a special location," and been "actually located or surveyed," before the 10th of March, 1804, "by a surveyor duly authorized by the Government making the grant;" nor did the recorder's report of the 2nd February, 1816, containing four tabular lists of claims, in the *third* one of which only this claim is mentioned, under the head of "Confirmations of concessions, orders or warrants of survey principally under the Act of Congress of 12th April, 1814," show that this claim had been surveyed by such duly authorized surveyor: it merely said, "Survey 18th March, 1803, and 2nd January, 1804," but did not state by whom surveyed, nor whether by a surveyor duly authorized or not. The Spanish surveyor, Soulard, had no authority to survey, at those dates, otherwise than as he might be recognized as a surveyor *de facto* until the actual change of possession of the country on the 10th of March, 1804. Papin vs. Hines, 23 Mo. 277.

The absence of these requisites brings the case squarely within the decision in *Blanc* vs. *Lafayette*, (11 How. U. S., 104) as a claim not within the purview of the act of 1814, or 1816, or 1812, and therefore not within the jurisdiction of the Recorder, under any Act of Congress.

The mere memorandum or opinion of the Recorder, expressed in that tabular list No. 3 of the report of 2nd February, 1816, in these words: "Confirmed, not exceeding a league square," amounts to nothing. The Recorder himself had no power to confirm: if the claim came within the purview of either Act of Congress, it was thereby confirmed; otherwise not. The Recorder's opinion was simply a mistake.

Strother vs. Lucas, 12 Pet., 455, in express terms to this point.

Burgess vs. Gray, 16 How. U. S., 62; it must appear on the face of the written report of the Recorder, that the claim was embraced in the Act of Congress of 12th April, 1814.

Papin vs. Hines, 23 Mo., 274—7.
Act of Cong. 12 April, 1814, (3 U. S. Stat. p. 121.)

c. None but "incomplete titles," that is, valid inceptive rights or claims originating under the former Spanish Government, prior to the Treaty of St. Ildefonso of October 1, 1800, *and surveyed in place*, La Fayette's case, 3 La. An. 61, could be within the purview of the 1st section Act of Congress of 12th April, 1814 (unless it were a grant made *bona fide* to an *actual settler*, before the 20th December, 1803); for all concessions, grants, or surveys, made by the Spanish authorities, after the date of the treaty, were null and void for want of power to make them.

La Fayette's case, 3 La. An. 61.
U. States vs. Reynes, 9 How. U. S. 127.
U. States vs. D'Autriere, 10 How. U. S. 609.
Davis vs. Police Jury of Concordia, 9 How. 140.

Such grants were expressly declared void by the Act of Congress of 26th March, 1804, (2 U. S Stat., 287, § 14,) unless made to an actual settler, prior to the 20th December, 1803, and limited to 640 acres.

The Act of Congress of 2nd March, 1805, (2 U. S. Stat., p. 324, §4,) authorizes such grants or incomplete titles, bearing date subsequent to the 1st October, 1800, to be filed, and (probably) for the purpose of investigation as to the *bona fide* character of the grant as to the question of actual settlement prior to the 20th December, 1803, within the exception of the 14th section of the act of 1804, but forbids their confirmation in the proviso to section 5 of said act.

The old Board, sitting under the Acts of Congress of 1805 and 1807, decided, on the 9th December, 1811, "that this claim ought not to be confirmed." The reason is not stated; but it may very well be presumed that it was for the reason that it was a *void* concession, which the instructions of the Treasury Department, 3 vol. Am. St papers, page 402, G. & S. Ed., forbade them to confirm, and was not a *bona fide* grant to an actual settler, prior to the 20th December, 1803, within the exception, and so, did not come within the purview of the Act of Congress under which they were sitting.

The Recorder, under the act of 13th June, 1812, (2 U. S. Stat., 751, § 8,) had the same powers and duties as the old Board of Commissioners as to "claims which have been heretofore filed, *but not decided on by the* commissioners," subject to the revision of Congress, but no power at all over claims which had been decided on and rejected.

Strother vs. Lucas, 12 Pet., 455; if the recorder confirmed a claim which the commissioners had rejected, it was an act of usurpation and void.

But in point of fact there was no attempt on the part of the Recorder to confirm it. Defendants' mistake in this particular results from the fact that the same person as recorder occupying that ministerial office, was at the same time a commissioner to pass upon certain claims. His tabular lists of 1816, 1, 2 and 4, were reported by the recorder to the commissioner of General Land Office, *as commissioner* for adjudication of claims, on which as such he passed judgment—whilst his list No. 3, in which this claim is found was a report *ministerially* of such claims as he considered confirmed by operation of the 1st section, act of 1814, and other Acts of Congress—and as to the claim in question he was mistaken, as it was originally *void* and not "*incomplete.*"

d. There was no confirmation by the Act of Congress of 29th April, 1816, (3 U. S. Stat., 329, § 2,) for the reasons:

1. That neither this claim, nor the tabular list No. 3, of the recorder's report of 2nd February, 1816, in which it was mentioned, came within either of the three classes of claims which were confirmed by that act; certainly not within the *first* class, which was of town or village lots only; nor within the *second* class which was of *donation* rights to actual settlers only, or grants (*i. e.* confirmations) by the old Board, or by the recorder

with *powers* extended under § 4 of the Act of Congress of 3rd March, 1813, (3 U. S. Stat., 812;) nor *finally*, within the *third* class, which was only of grants and confirmations by the Recorder as successor of the old Board, having the same powers and duties, in cases "heretofore filed, but not decided on," under the several Acts of Congress, commencing with the act of the 13th June, 1812. 3 March 1813; 2nd Augt 1813

It will be seen that these three classes of claims, thus confirmed by this act of 1816, correspond to the tabular lists of the report of the 2nd February, 1816, Nos. 1, 2 and 4, but that the tabular list No. 3 (in which only this claim was mentioned,) was passed over, or omitted, and was not confirmed at all by that act. They were confirmations "principally under the act of 12th April, 1814," and if so, they were confirmed by that act, and did not need to be confirmed again by this act of 1816. An inspection of tabular list 3, will show that it is a *ministerial* report—else how does it embrace the case of Daniel Boone for 1000 acres which was confirmed by special Act of Congress, February 10, 1814. It has been shown above, that this claim did not come within the act of 12th of April, 1814. It follows that this claim was not confirmed under either of these Acts of Congress. Such was the construction given by the Attorney-General to the act of 1814, case of St. Vrain, 2 vol. Opinions Atty. Gen. p. 656.

2. As to the several acts "commencing with the act of 13th June, 1812," it has already been shown that this claim did not come within the purview of the act of 12th April, 1814, nor of the act of 29th April, 1816, and it is quite plain that the recorder as successor of the old Board had no jurisdiction of it, under any other one of the acts referred to, and for the reason that it did not fall within any class or description of claims embraced in those acts down to 1816.

3. Again, being a concession bearing date the 28th October, 1802, and not being a *bona fide* grant to an actual settler, before the 20th December, 1803, the concession was void *ab initio*, and did not come within the policy or purview of any

of these Acts of Congress. If these positions be well taken, then there was never any valid confirmation at all of this claim.

(II). Even if there were a confirmation, the title in fee did not pass out of the United States until the patent issued, and only by virtue of the patent: for the reasons

1. That such was the policy, scope, and intention of the Acts of Congress in question—

Act of 12 April, 1814, (3 U. S. Stat. 121), § 3.
Act of 29 April, 1816, (3 U. S. Stat. 328), § 3.

and such confirmation through the act of 1814 could alone operate upon the two Spanish surveys *in place*—not changing the Spanish survey. 13 Pet. 81, 133; 15 Pet. 173; 10 How. 541, and other decisions; U. S. Survey in 1818 not affected by it. The court below finds as to the 1400 arpent survey, it was not confirmed by the act of 1814; as a consequence the 4002 survey shared the same fate. See record in Jackson's case, p. 33.

2. It was expressly provided by the Act of 1814, § 3, that the survey, and a patent certificate to be issued by the Recorder, should be "directed to the Commissioner of the General Land Office, and that if it should appear to the satisfaction of the Commissioner, that such certificate of confirmation shall have been fairly obtained according to the true intent and meaning of this act, then and in that case patents shall be granted" in the usual manner; and the Act of 1816, (§ 3), was to the same effect in more general terms.

3. These acts contemplate that the Recorder shall determine in the first instance by issuing a patent certificate, what claims and persons (and that the particular claim and person) came within the provisions of the confirming acts, and were confirmed under either class reported. The words of the acts alone do not ascertain this with sufficient certainty; and the survey and patent certificate are necessary for the information of the Commissioner, before he can determine whether a patent ought to be issued to the person named, or to any person, upon the claim in question.

4. The power thus given to the Commissioner, and the duty enjoined upon him, were executive and political functions, which the Courts cannot control or take away; nor can a title vest in fee, in these cases, until these functions have been performed, and a patent issued.

> Papin vs. Hines, 23 Mo., 277.
> West vs. Cochrane, 17 How. U. S., 403.
> Stanford vs. Taylor, 18 How. U. S., 409
> Lafayette vs. Kenton, 18 How. U. S., 197.
> Foley vs. Harrison, 15 How. U. S., 433.
> Maguire vs. Tyler, 1 Black. 195.
> Hannibal & St. Jo. R. Co. vs. Smith, 41 Mo., 333.

5. No statute of limitations of a State can begin to run against the patentees of the United States, until the patent has issued.

> Gibson vs. Chouteau, 13 Wall., 101.
> Fenn vs. Holme, 21 How. U. S., 481.
> Hooper vs. Scheimer, 23 How. U. S., 235.

It follows from this that there was no confirming act and survey equivalent to a patent, nor any possibility of a title in fee passing out of the United States, and vesting in the defendant, so as to let in the statute of limitations to run against the plaintiffs before the patent issued, and as the issuing of the patent devolved by a special law upon the executive department, over which the plaintiffs had no control, they should not be prejudiced by lapse of time, since it was ordered for their benefit, and as they had no standing in court until ministerial officers of the Government discharged the duty imposed upon them by law by issuing the patent and perfecting their rights. Gibson vs. Chouteau, 13 Wallace, 101.

The Commissioner of the General Land office objected to the survey and patent certificate issued in 1825, and stopped the progress of the claim into a patent. It matters not what reasons were given. The Court may now see that good and sufficient reasons existed, viz: that the concession and Spanish survey were void *ab initio*; that there was never any confirmation of the claim; that the U. S. survey, 1953, and the patent certificate were made without legal authority; and that the recorder had mistakenly supposed it was confirmed, though the original concession was for but 6000 arpents, 2497 of which had lapsed to the U. S. by non-survey.

So the matter stood until Congress passed the act of August 11, 1842, as follows:

"It shall be the duty of the proper officers of the United States to issue a patent to Gregoire Sarpy or his legal representatives for 7056 arpents, containing 6002.50 acres of land, pursuant to patent certificate number 1033, dated September 13th, 1825, and to the survey thereof number 1953, certified by the Surveyor of Illinois, Missouri and Arkansas at St. Louis, on the 13th day of September, 1825."

CONSTRUCTION OF THE ACT.

1. This act is in terms an authority for the issuing of a patent, which passes the title when issued: it is not a present grant. There are no granting words in the act. It is a *duty* imposed upon the officer, and until discharged the law authorizing its performance might be repealed.

2. It may be regarded until so repealed as an appropriation of the land to answer the patent: Brown vs. Clements, 3 How. U. S. 667; Wilcox vs. Jackson, 13 Pet., 498; Hannibal & St. Jo. R. Co. vs. Smith, 41 Mo., 333, S. C. 9 Wall.; State vs. Ham, 19 Mo., 602.

3. It cannot operate as a confirmation of the previous claim, or concession: there can be no confirmation of a void grant. There are no words of confirmation in the act. If the act may be regarded as ratifying the survey 1953 (approved and certified in 1825) and the patent certificate of 1825, because they are named in the act, still it would not follow that the void concession was thereby confirmed.

4. It may also be regarded as the inceptive act in the creation of the title afterwards perfected by patent, and as such it is the *first valid act* to which *relation* can be had, unless the survey

and patent certificate of 1825 can be taken as such first valid right, because named by the act itself.

5. The reasons, motives, or objects of Congress in giving the authority, or passing the act, are not a subject of judicial inquiry.

Fenwick vs. Gill, 38 Mo., 510—527.

Fletcher vs. Peck, 6 Cranch, 87—130.

State vs. Murphy and Glener, 41 Mo., 374.

If they were, certainly the heirs of Gregoire Sarpy to whom the original concession was made, were more meritorious in the eyes of the law-making power than strangers to his title, particularly when the record does not show that any claimant was in possession of the grant outside the lines of the original Spanish survey at the date of the law.

6. The act and patent give the title "to Gregoire Sarpy *or* his legal representative" in the alternative.

The act of Congress of May 20, 1836 (5 U. S. Stat. p. 31), provides that where the patentee is dead, at the date of the patent, the title shall enure through him "to his heirs, devisees or assignees," and "become vested in them as if the patent had issued to him during his life." The ordinary patent is to a man *and* his heirs and assigns.

Gregoire Sarpy died intestate in 1824. There are no devisees, and the plaintiffs claim as *heirs ;* consequently, if the act of 1836 should be held as applicable to this case, which we contend it is not, it is only as assignee, either by direct conveyance or by estoppel, that the defendant can possibly take under the patent through *enurement.*

The defendant claims only by the deed of 1817 of Bernard Pratte and others to Wilson P. Hunt, and only the title of Mad. Labaddie's heirs through the Sheriff's sale. See paragraphs No. 7, 8, 9, of stipulation on Record page 39.

II. ENUREMENT.

7. Enurement can take place in only one of two ways: either

   a. On the doctrine of Relation; or

   b. On the doctrine of Estoppel.

Each are fictions of the law, and must never work injustice. Co. Lit., 150; 1 Price's Ex. Rep., 154; 1 Cooper, 177; 3d Black. 43—"nor an injury," 17 John. 348—"nor carried further than the reason introducing it requires," 1 Lill Ab., 610.

(a.) RELATION.

Enurement cannot take place through the deed of 1817 *as a conveyance*, by relation, for the reasons:

1. That there was no valid inceptive right in existence, at the date of the deed, which had emanated from the sovereign proprietor of the soil, and which could pass by deed, or to which relation can be had.

The deed of one having no title conveys nothing: those who come in under a void grant can acquire nothing.

Polk's Lessee vs. Wendell, 9 Cranch, 99; S. C.
    5 Wheat. 308.
Sampeyreac vs. U. States, 7 Pet. 241.
U. S. vs. Aredondo, 6 Pet. 731.
Stoddard vs. Chambers, 2 How. U. S. 318.
Maguire vs. Tyler, 40 Mo. 434.
Gibson vs. Chouteau, 39 Mo. 565.
McCracken vs. Wright, 14 J. R. 193.
U. S. vs. Reynes, 9 How. U. S. 127—151.

Daniel, J.: Property protected by the treaty "will embrace rights either in possession or in action, complete or incomplete titles; but in either acceptation it will be applied only *to rights founded in justice and good faith, and based upon authority competent to their creation.*"

So, Barbour, J., in *Strother* vs. *Lucas*, 12 Pet. 436: "We do not adjudge a title to be in either party, which rests on acts incompetent to vest, transfer or hold property in opposition to that party in whom the right exists by the law of the land and established rules and principles which govern property and regulate its transmission and enjoyment."

2. No relation can be had to a *void* act, or to a void deed, nor to a trespass, nor to the statute of limitations, nor to a time *anterior* to the date of the first or inceptive act in the creation of the title; but only in furtherance of justice, and to those only who stand in some privity with the patentee who had the right to the land or title.

Gibson vs. Chouteau, 13 Wall. 101.
Heath vs. Ross, 12 J. R. 140.
Lynch vs. Bernal, 9 Wall. 325.
Montgomery vs. Ives, 13 Smed. & Mars. (Strong.)
Jackson vs. Bard, 4 John. 230.

There are cases which have held that where an *inceptive* right has emanated from the government which is *lawful and binding on the conscience of the sovereign* making the grant, such right is capable of being conveyed to another so as to admit of relation through a conveyance made subsequent to the date of origin of such right; but no case has been found which holds that such *inceptive* right can be conveyed before it exists, or that relation can be had to a time *anterior to the origin of the right itself.*

Such cases are the following:

Lajoye vs. Primm, 3 Mo. 534.
Montgomery vs. Sandusky, 9 Mo. 716.
City vs. Tony, 21 Mo. 254.
Garnier vs. Berry, 28 Mo. 446.
Papen vs. Mussey, 27 Mo. 452.
Hannibal & St. Jo. R. Co. vs. Smith, 41 Mo. 333.

In the following cases relation was had to the date of the first act done under authority of an act of Congress towards acquiring the title, such as the filing the claim, the issuing of a certificate, the location of a warrant, an entry, or the date of a grant by the United States:

Landes vs. Brant, 10 How. U. S. 346, to the filing of the claim.

Ross vs. Borland, 1 Pet. 664, to the certificate issued.

Gibson vs. Chouteau, 39 Mo. 565, S. C. 13 Wall. 101, to the location made.

French vs. Spencer, 21 How. U. S. 228—240, to the location of a warrant.

Lynch vs. Bernal, 9 Wall. 325, to the presentation of the claim.

LesBois vs. Brammell, 4 How. U. S. 462, to the date of grant.

In *Stoddard* vs. *Chambers*, 2 How. U. S. 298, the decision was put, not on the doctrine of relation, but on the ground of estoppel by a warranty deed made after the origin of the *inceptive* right, but before the filing of the claim under the act of Congress. In *Easton* vs. *Salisbury*, 21 How. U. S. 426, the title moved by way of estoppel, not by relation.

In *French* vs. *Spencer*, (21 How. 240), Catron, J. said: "The fiction of relation is, that an intermediate *bona fide* alienee of the *incipient* interest may claim that the patent enures to his benefit by an *expost facto* operation, and receive the same protection at law that a court of equity would afford him."

Here, we say, that there is no "intermediate alienee of the *incipient interest.*"

In *LesBois* vs. *Brammell* (4 How. 462), it was said "the patent must come in support of the grant." Here the patent cannot come in support of a *void* grant; but it is itself the only valid original grant, unless the act of 1842 may be so regarded, which seems impossible.

Therefore, there can be no relation through this deed of 1817 *merely as a conveyance.*

(b.) ESTOPPEL.

Estoppel *in pais* is deemed to be out of the question, as there are no facts on which such an estoppel could be based.

Henshaw vs. Bissell, 18 Wall., 255.

Campbell vs. Johnson, 44 Mo., 251.

Estoppel may be supposed to arise upon this deed of 1817, in three different ways:

1. By positive assertion or affirmation of particular facts in the deed by way of recital; or

2. By positive and certain averment of seizin of some certain and particular estate in the land; or

3. By express warranty of title in fee, or of some lesser estate or title.

(I.) ESTOPPEL BY RECITALS.

1. The principal facts recited in the deed, and which may be relied on as working an estoppel by way of recital, would seem to be the following:

a. That the *five* grantors as the five heirs of Madame Labaddie and so tenants in common (the husbands of the *four* female heirs holding in the right of their wives) make this deed in the character of such heirs and tenants in common.

b. That "the one" of "the two tracts of land" conveyed (that involved in this controversy) was granted to Gregoire Sarpy by Lieut.-Gov. Delassus, "by a concession bearing date the 28th October, 1802."

c. That the "two said tracts of land" (described by metes and bounds, one of them being that involved in this controversy,) were subsequently confirmed to the said Gregoire Sarpy under authority of the United States. (Strictly, this is matter of law, and not matter of fact.)

d. That said two tracts of land were all the lands on the River des Peres at any time granted to the said Gregoire Sarpy under the authority of the Spanish government, or claimed by him under Antoine Reihle, or confirmed to him by the government of the United States.

e. That said two tracts of land were the same that were "heretofore sold by Jeremiah Connor, Sheriff of the county of St. Louis to satisfy certain debts of the said Gregoire Sarpy (in virtue of certain executions to him for that purpose directed) to Pierre Chouteau, and by said Chouteau and wife, by deed bearing date the 30th June, 1808, conveyed to Madame Pelagie Chouteau *veuve* Labaddie, and which descended from her, she being now dead," to the said five heirs, naming them with their respective husbands and wives.

f. That the kind of title or estate which they convey in said two tracts is only the title existing in virtue of said concessions and the supposed confirmation thereof, and not an absolute title in fee simple.

2. It thus appears on the face of this deed, and by the recitals, that the parties supposed that there had been a confirmation of the tract of land therein described by a "figurative plan" to Gregoire Sarpy, upon the concession to him of the 28th October, 1802; that the right of Gregoire Sarpy therein had been sold by the Sheriff to Chouteau, and by Chouteau and wife conveyed, in 1808, to Madame Labaddie, and upon her death had descended to the grantors named as her heirs; and that four of the five husbands (Gregoire Sarpy being one) joined with their wives (heirs of Madame Labaddie) and with the other husband and heir and his wife, to convey their several interest of one undivided *fifth* each, held by them respectively as tenants in common in said tract of land.

3. But in point of law and fact the said Sheriff's sale and deed were inoperative and void, and for the reasons (as we say):

a. That the concession being a nullity, and there being no valid confirmation, Gregoire Sarpy had no right or interest that could pass by such sale and deed.

b. That said Sheriff's deed was utterly *null and void* for the reason that it was not acknowledged in a court of record in open court, with the clerk's certificate of such acknowledgment indorsed thereon under the seal of the Court, as required by the statute then in force, and as held to be necessary by the Courts of Missouri to make the deed valid. Hence, through this deed there can be no "legal representative" of Sarpy created.

Stat. of Mo. of 3rd July, 1807, (1 Ter. L. of Mo., p. 120, § 45.)
Ryan vs. Carr, 46 Mo. 483.
Adam vs. Buchanan, 49 Mo., 64.
Scruggs vs. Scruggs, 41 Mo., 242.
Allen vs. Moss, 27 Mo., 364.
Allen vs. King, 35 Mo., 225.

The statute reads (§ 47, 1 Ter. L., p. 121) "It shall be the duty of the clerks of the several courts in this territory to indorse upon every deed acknowledged by any sheriff a certificate of such acknowledgment, and under *the seal of the court*, and to enter on the minutes a description of the lands and tenements sold, the purchase money, and the names of the parties to the suit."

This deed was acknowledged before a Justice of the Peace, for which there was no authority of law.

The finding of the Court below (1st declaration of law) declared that this Sheriff's deed "was inoperative as a conveyance."

c. That the sale merely, without a deed, was wholly inoperative to pass the title, or any right whatever. 18 Mo 363

The statute reads (§ 45, 1 Ter. L. p. 120,) that the Sheriff shall "give the buyer a deed duly executed and acknowledged in court, for what is sold; which deed shall recite the execution, purchase and consideration, and shall be effectual for passing to the purchaser all the estate and interest which the debtor *had* or *might lawfully part with in the lands* at the time the judgment was obtained."

4. It is now claimed by the defendant (as it was decided in the court below) that "the deed of Bernard Pratte and others to Wilson P. Hunt (including Gregoire Sarpy and wife among the grantors), dated the 29th of August, 1817, was a confirmation by said Sarpy of the *sale* by the Sheriff Connor in 1808 to Pierre Chouteau." 3rd declaration of law in the finding.

It cannot be supposed that the court below meant to hold that the sale by the Sheriff, *without a deed*, had any effect on the title at law or in equity to give a valid right which was capable of *confirmation* or ratification; for no principle is better settled than that an utterly *void* act does not admit of confirmation. 9 Whea. 541 to 551; 8 Cowan, 374, Bromly vs. Holland, Cooper's Cases in Ch: 11 Whea. 90. Besides a sale by Sheriff *without deed passes no title to purchaser.*

The courts of Missouri hold that a sheriff's sale and deed is the act of the law *in invitum* as to the owner of the property sold, and is not his act, but is done in the execution of a statute power, which must be strictly complied with, or the whole thing is a *nullity ab initio*, the same as in case of a married woman's deed defectively acknowledged; and no title can pass either in law or equity, and extraneous evidence is inadmissible to help the defect; nor can there be any help in equity.

> Ryan vs. Carr, 46 Mo. 482, the act of the law, and no title passes.
>
> Chauvin vs. Wagner, 18 Mo., 544, it cannot be helped by extraneous evidence; the title does not pass, "and the deed cannot be made effectual by the aid of a Court of Chancery."
>
> Samuels vs. Shelton, 48 Mo., 448, it "cannot be sustained or helped by a resort to extraneous testimony."

"A Court of Equity cannot aid the imperfect execution of a statutory power": Ware vs. Johnson, 55 Mo., 503.

The finding of the court below (2nd declaration of law) declares that "said deed is admissible in evidence as explanatory of the subsequent conveyances which expressly refer thereto."

This explanation must certainly be confined to *those recitals if any which do refer to said deed*, to explain the derivation of title, what lands were described, and what kinds of titles, estates or interests, in those lands, were intended to be conveyed.

There are certainly no words of *confirmation*, as such, in the deed. It is true that the deed of Bernard Pratte and others to Hunt, in 1817, recites that the two tracts of land therein conveyed had been "heretofore sold" by the Sheriff to Chouteau, and by Chouteau and wife conveyed to Mad. Labaddie, and had descended from her to the five grantors named; and if the supposed *confirmation* can stand as having operation on the principle of estoppel by the recitals, then, as the grantee accepted the deed, and the defendant claims under it, it must follow, on the principle that estoppels must be mutual, that the defendant here is equally estopped by these same recitals to deny that the grantors professed to have title *only by descent* as the five heirs of Mad. Labaddie and that the land described was all that was granted to Sarpy on the River des Peres, and only undertook to convey their several interests as tenants in common of undivided shares, four of the five husbands (Gregoire Sarpy being one) holding in the right of their wives only, and joining in the deed merely for the purpose of conveying their wives' estate. But in point of fact the deed of 1817, from Gregoire Sarpy and others to Hunt, makes no reference to a deed from Sheriff Conner to Chouteau. The deed referred to therein is from Chouteau to Mad. Labaddie of date 30th June, 1808. Hence the "recital" does not exist upon which the court below decide the Sheriff's deed to be admissible in evidence as explanatory.

Estoppels must be mutual:

Hempstead vs. Easton, 33 Mo., 142.
Dickson vs. Anderson, 9 Mo., 156.
Clamorgan vs. Greene, 32 Mo., 285.
Lajoye vs. Primm, 3 Mo., 536.
Joeckel vs. Easton, 11 Mo., 118.
Darette vs. Briggs, 47 Mo., 356.

5. Any presumption that might arise, in general, upon the face of a deed, to the effect that each and all of the grantors undertake or profess to convey the whole estate or title and every estate or interest, which he or they may have in the land described, is in this case rebutted by the terms and recitals of the instrument itself.

The intention to be gathered from the whole face of the deed must govern the construction, as in other contracts.

3 Washb. R. P. 3rd Ed. 333;
2 Greenl. Cruise's Dig., tit. *Deed*, ch. XXI, § 31, p. 335 (*265 of Vol. IV.) note.
Long vs. Wagoner, 47 Mo., 178.
Picot vs. Page, 26 Mo., 418—an authority specially referred to.

6. The interests conveyed being several, the covenant of warranty is several; the covenant is to defend the lands "as above

mentioned;" and in general, whether a covenant is joint or several, or both, depends upon the terms and intention of the instrument and upon the nature of the transaction as indicating the intention of the parties.

Rawle on Covts., 3d Ed. 578, and n. 2.
Carter vs. Monroe Manuf. Co., 1 Green's. Ch. 467.
Evans vs. Saunders, 10 B. Mon., 291; 12 Pick. 57; 20 Pick. 458; 12 Met. 172; 5 Gratt. 157, 172.

7. Gregoire Sarpy joining with his wife to convey her estate only affirmed himself to be seized in her right of one undivided fifth and only professed to have a life estate by the curtesy initiate, which expired at his death; and the warranty of a life estate expires with the estate to which it is annexed.

Rector vs. Waugh, 17 Mo., 27.
Register vs. Rowell, 3 Jones (N. C.) 312.
Patterson vs. Moore, 15 Ark., 222.
Valle vs. Clemens, 18 Mo., 486.

An after-acquired title of the husband will not enure to the grantee by such a deed.

8. On the construction that Gregoire Sarpy affirmed or covenanted for his wife's title, such covenant is *personal and collateral* only, and does not run with the land to his heirs claiming in the right and seizin of their father; and it can operate against them only by way of *rebutter* to the extent of assets descended, and then only to the extent and value of the one undivided fifth so warranted, "as above mentioned."

Chauvin vs. Wagner, 18 Mo., 553.
1 Smith's Lead. Cas., 155–9 H. & W. notes.
2 Smith's Lead. Cas., 545, 556–60, H. & W. notes.
3 Washb. R. P. 3d Ed., 399, (*662).
Rawle on Covts, 3d Ed. 394 *et seq.*

"Warranty confined to the estate conveyed."

Wynn vs. Harman, 5 Grattan, 157, 162.
Blanchard vs. Brooks, 12 Pick. 57.
20 Pick. 458; 12 Met. 172.

9. If the estoppel be put simply on the ground of a positive affirmation that the grantor had a title or estate which he in fact

did not have, still the estoppel can be only co-extensive with the affirmation, which is limited here to the undivided one-fifth interest so held by the husband as tenant in common, in right of his wife, *in the Spanish survey*.

10. It is thus manifest on the face of the instrument, and concluded by the recitals therein, that Gregoire Sarpy joined in the deed as husband with intent to convey only the estate held by him in right of his wife, and there are no words showing an intention or professing on his part to convey any estate or interest held or claimed by him *in his own right*.

A man may convey one estate, and not another estate which he has (whether he knows it or not) in the same land.

Clamorgan vs. Lane, 9 Mo., 446,
Doe vs. Donelly, 3 Kerr. (N. Bruns.) 238.
Jackson vs. Stevens, 16 J. R., 110.
Farrer vs. Patton, 20 Mo., 81.
Valle vs. Clemens, 18 Mo., 491,

Gamble, J.: "The court will not be authorized to say that the parties meant to convey a different interest or estate from that which the deed professes to convey."

Little's Admr. vs. Chauvin, 1 Mo., 630 (449 of Repub.)

a deed will convey only what the grantors own in the character in which they profess to convey, and not what they own in another character.

Faussett vs. Carpenter, 2 Dow & Clark, (Ho. of L.) 232; S. C. 5 Bli. N. R., 75:

held, "that the intention to be gathered from the face of the deed and the circumstances, the nature of the estates held, the consideration and the form of the acknowledgment, will govern the construction," and where a husband held an estate in right of his wife, and another estate as trustee for a third person, it was held that the deed conveyed the wife's estate only.

1 Washb. R. P., 3d Ed. 106-7 (*92):

"the deed of a tenant for life by the curtesy conveys what the grantor has and nothing more."

The *rule* is, that the intention governs in the construction of deeds as in other contracts: subsequent events cannot change the interpretation.

2 Greenl. Cruise Dig., Tit. *Deed*, ch. XXI. § 31, p. 335, (*265 of vol. IV) n.;
3 Washb. R. P. 3d Ed., 333; Rawle on Cov., 447, n. 4.
Long vs. Wagoner, 47 Mo., 178.
Picot vs. Page, 26 Mo., 418.

(II.) ESTOPPEL ON THE AFTER-ACQUIRED TITLE.

1. Construction as to what estate, or what kind of title, is conveyed, affirmed, or warranted in the deed.

Postponing the question *what land* is described, and considering, first, *what estate* in any land is the subject of the conveyance, or of the warranty and estoppel, it seems certain

a. That an absolute estate or title in fee simple is not asserted nor conveyed, nor warranted in the deed of 1817. The distinction between conveying the *land* as such without more (where an estate in fee may be presumed) and conveying only some particular or restricted estate or interest in the land described, is so plain as scarcely to need the citation of authorities.

Comstock vs. Smith, 13 Pick. 116.

b. That the only title or estate which is asserted or conveyed is the (supposed) right or title acquired by Gregoire Sarpy under the concession of 28th October, 1802 (speaking only of the tract of land now in controversy) and the supposed confirmation thereof; which right or title came to the grantors through said Sheriff's sale and by inheritance from their mother.

c. That it is the wife's interest in that (suppossed) title which Gregoire Sarpy, joining with his wife, professes to convey is clear from the deed in connection with the stipulation of the parties.

It may be observed here that the words "*grant*, *bargain and sell*" did not at the date of this deed, by force of any statute, import an indefeasible estate in fee simple, nor imply any covenants of warranty. The first statute to this effect was passed in 1825: that of 1804 was a nullity: Carter vs. Dachouquette, 1 Mo. 567.

d. That while in the first clause of the granting premises, the tract of land conveyed is described by metes and bounds, it is at the same time, not the *land* without more, only, but the nature of the title is also specifically designated. This excludes the presumption that a fee simple was intended.

e. That in the second clause of the granting premises (if it can be so considered) the estate affirmed and conveyed is expressed to be "*all the lands which we may be entitled to in virtue of said concessions*" &c.; and this is equivalent to *all our right*, *title and interest* in those lands, and no more.

Jeffrey vs. Bushnell, 2 B. & Adl 281.

f. That this second clause is not to be regarded as a separate part of the granting premises, intending to convey *other* lands than those already described by metes and bounds, but is more properly to be considered as intending further to explain and restrict the kind of title or estate which the grantors undertook to convey in the *two tracts of land*, before definitely described as the subject of the grant, and already declared to be all the lands that ever were granted or confirmed on the River des Peres, viz: that it was all the right. title and interest which the grantors had, or might be entitled to, in those lands, as heirs of Madame Labaddie, and in virtue of said concessions and confirmation, Sheriff's sale, Chouteau's deed and their inheritance of same, and no more. No intent in disclosed to enlarge the grant beyond the metes and bounds of the figurative plat described in the premises; an intent to add 4486 additional arpents, separate property of one of the grantors, would be manifested by the use of "also" "in addition to" or words of equivalent import. But the habendum contradicts such intent for it is of "the said two tracts of land," and not of a "claim" of Gregoire Sarpy, one of said grantors, in which the heirs had no rights, and unsurveyed until the year 1818—and at the date of the deed land of the government, west of the Spanish survey sold by them.

deeds as in other contracts: subsequent events cannot change the interpretation.

2 Greenl. Cruise Dig., Tit. *Deed*, ch. XXI. § 31, p. 335, (*265 of vol. IV) n.;

3 Washb. R. P. 3d Ed., 333; Rawle on Cov., 447, n. 4.

Long vs. Wagoner, 47 Mo., 178.

Picot vs. Page, 26 Mo., 418.

(II.) ESTOPPEL ON THE AFTER-ACQUIRED TITLE.

1. Construction as to what estate, or what kind of title, is conveyed, affirmed, or warranted in the deed.

Postponing the question *what land* is described, and considering, first, *what estate* in any land is the subject of the conveyance, or of the warranty and estoppel, it seems certain

a. That an absolute estate or title in fee simple is not asserted nor conveyed, nor warranted in the deed of 1817. The distinction between conveying the *land* as such without more (where an estate in fee may be presumed) and conveying only some particular or restricted estate or interest in the land described, is so plain as scarcely to need the citation of authorities.

Comstock vs. Smith, 13 Pick. 116.

b. That the only title or estate which is asserted or conveyed is the (supposed) right or title acquired by Gregoire Sarpy under the concession of 28th October, 1802 (speaking only of the tract of land now in controversy) and the supposed confirmation thereof; which right or title came to the grantors through said Sheriff's sale and by inheritance from their mother.

c. That it is the wife's interest in that (suppossed) title which Gregoire Sarpy, joining with his wife, professes to convey is clear from the deed in connection with the stipulation of the parties.

It may be observed here that the words "*grant, bargain and sell*" did not at the date of this deed, by force of any statute, import an indefeasible estate in fee simple, nor imply any covenants of warranty. The first statute to this effect was passed in 1825: that of 1804 was a nullity: Carter vs. Dachouquette, 1 Mo. 567.

d. That while in the first clause of the granting premises, the tract of land conveyed is described by metes and bounds, it is at the same time, not the *land* without more, only, but the nature of the title is also specifically designated. This excludes the presumption that a fee simple was intended.

e. That in the second clause of the granting premises (if it can be so considered) the estate affirmed and conveyed is expressed to be "*all the lands which we may be entitled to in virtue of said concessions*" &c.; and this is equivalent to *all our right*, *title and interest* in those lands, and no more.

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f. That this second clause is not to be regarded as a separate part of the granting premises, intending to convey *other* lands than those already described by metes and bounds, but is more properly to be considered as intending further to explain and restrict the kind of title or estate which the grantors undertook to convey in the *two tracts of land*, before definitely described as the subject of the grant, and already declared to be all the lands that ever were granted or confirmed on the River des Peres, viz: that it was all the right. title and interest which the grantors had, or might be entitled to, in those lands, as heirs of Madame Labaddie, and in virtue of said concessions and confirmation, Sheriff's sale, Chouteau's deed and their inheritance of same, and no more. No intent in disclosed to enlarge the grant beyond the metes and bounds of the figurative plat described in the premises; an intent to add 4486 additional arpents, separate property of one of the grantors, would be manifested by the use of "also" "in addition to" or words of equivalent import. But the habendum contradicts such intent for it is of "the said two tracts of land," and not of a "claim" of Gregoire Sarpy, one of said grantors, in which the heirs had no rights, and unsurveyed until the year 1818—and at the date of the deed land of the government, west of the Spanish survey sold by them.

2. Construction as to WHAT LAND is described and intended to be conveyed.

a. In the first clause of the granting premises, the "two tracts of land" conveyed are described by the metes and bounds of the "figurative plans" of the Spanish surveys, the tract in controversy here being "supposed to contain 4002 arpents, be the same more or less." And for further identification (apparently) it is added that said "two tracts of land were all the lands on the River des Peres at any time granted to Gregoire Sarpy by the Spanish government, or confirmed to him by the government of the United States," and that they were "two of the tracts of land heretofore sold by the Sheriff to Chouteau, and by Chouteau and wife by deed of 30 June, 1808, conveyed to Madame Labaddie, and which descended from her, she being now dead," to the five grantors named, heirs of Madame Labaddie. And the Sheriff's deed purports to convey a certain tract of land situate on the River des Peres, "the same being a *part* of the quantity of six thousand apents granted to said Sarpy as per concession from Charles D. Delassus, dated the 28th October, 1802, containing the said tract 4002 arpents, being the same more or less."

This would seem to be explicit so far, beyond all doubt or question as to *what land* was intended to be conveyed. And these clauses and recitals negative the idea that the whole "claim" as such was intended to be conveyed; for the grantors, as heirs of Madame Labaddie, deriving title under the Sheriff's sale and deed, could not pretend to be entitled to the whole concession of *six thousands* arpents (for their deeds recite it is but *part* of it) much less the *seven thousand and fifty-six* arpents in the patent.

b. In the *second* clause of the granting premises no other lands are described or located in any way. It is simply "all the lands which we" [grantors and heirs of Madame Labaddie] "may be entitled to," in virtue of the said concessions and confirmation. In the *first* clause it is positively affirmed that the two tracts described therein by metes and bounds *are all the lands* ever granted to Gregoire Sarpy on the River des Peres or claimed by him under Reihle, or confirmed to him. Therefore, even if this clause can be supposed to refer to the matter of *what land* was intended, and not rather to the matter of *what kind of title* was intended, still it can, at most, be regarded only as a general *sweeping clause*, making no addition whatever to the lands which were the subject matter of the grant.

As to sweeping clause see *Moore* vs. *McGrath*, Cowper, J: Jackson vs. Stevens, 16 J. R. 110. Such clauses add nothing to the preceding definite description of the lands granted. 11 Pick. 213; 6 Pet. 741; 36 N. Hampshire, 91; 15 Pick. 434.

c. Entirely consistent is the construction that makes this clause not an additional grant of other lands, but an explanation and restriction of the kind of title or estate intended to be granted in the lands already described by metes and bounds, viz: that it is all the right, title and interest which *we*, as heirs of Madame Labaddie, may be entitled to in virtue of such inheritance, and in virtue of the concessions named (and the supposed confirmation thereof) and described by a figurative plan of survey. Nowhere in the deed is the concession of 6000 arpents referred to. "Figurative plan" controls. 32 Barb. 374; 15 Cal. 304 2 Black. 499; 48 Pa. 253; 53 Ills. 19.

d. The extrinsic and contemporaneous facts and circumstances bearing upon the intention of the parties to the deed as to what was the subject matter of the grant, whether in respect of the lands or the title conveyed, come strongly in support of this construction.

These facts are, in brief, that the concession was for 6000 arpents to be taken on the River des Peres "and in the woodland domains of the King." Of this concession one part or tract was surveyed off by Soulard in 1803 on the River des Peres, by bounds, landmarks, lines and limits, the river a natural monument being the eastern boundary, (supposed to contain 4002 arpents, more or less) which the recent surveyor (Cozzens) has retraced and identified by the landmarks, calls, and marked lines of the Spanish survey, and which are thus found to contain in fact only 2563.15 arpents. Soulard then proceeded to survey out another portion or tract "in the woodland domains" on the river Meremac, 12 miles distant from the River des Peres, said to contain

1400 arpents, but which by the lines and calls of the figurative plan and description of the Spanish survey is found by the recent surveyor, retracing the lines, to contain in fact only 1040 arpents. The two Spanish surveys thus actually contained only 3603 arpents of the whole 6000 arpents of the concession, leaving a balance of 2397 arpents yet unsurveyed and never severed by any Spanish survey from the public domain, and consequently the territory of the government.

Thus the matter stood at the date of the Sheriff's attempted sale and deed to Chouteau and of Chouteau's deed to Madame Labaddie, in 1808. The Sheriff's deed mentions this tract of 4002 arpents on the River des Peres as "a *part* of the quantity of 6000 arpents granted to Gregoire Sarpy," &c., and Chouteau's deed mentions the two tracts, one of 4002 arpents on the River des Peres, and the other of 1400 arpents on the river Meremac, as forming "a *part* of a concession of 6000 arpents granted to Gregoire Sarpy," &c. It is thus manifest that down to the time when the heirs of Madame Labaddie, after her death in 1813, made this deed of 1817 to Hunt, there had been no attempt nor intention to buy or sell, or convey the whole *concession* of 6000 arpents, or the whole *claim* of Gregoire Sarpy as such.

The deed of 1817, of the five heirs to Hunt, begins by reciting the concession and describing "two tracts of land" on the River des Peres (only one of which is involved in this controversy) by the metes and bounds of the *figurative plans* of the Spanish surveys, and says: "which two tracts of land *were* subsequently confirmed," &c., and *were* "two of the tracts of land" sold by the Sheriff, &c., and conveyed by Chouteau and wife to Madame Labaddie and inherited by them from her. The second clause in respect of the lands conveyed, merely reiterates in a sweeping generality of phrase, that they convey "all the lands which *we* may be entitled to in virtue of *said* concessions, or of the confirmation whereby the same *was* confirmed," &c., namely as before stated and supposed. Whence it would seem to be clear that the parties then supposed that the two tracts which alone had then an existence and a location on the ground were all that had been confirmed on the River des Peres, or had been sold and had descended to the grantors, and that they did not contemplate any other lands or tracts of land as the subject of the grant. There is certainly no mention of the whole concession of 6000 arpents nor of the whole *claim*. The five heirs were selling, and Hunt was buying only the "two tracts of land" which they supposed they had inherited from Madame Labaddie; surveyed on the River des Peres and they were not dealing for the whole original *claim* of Gregoire Sarpy at all.

The subsequent U. S. survey 1953 was made in 1818, the year *after* this deed to Hunt, and was approved and recorded in 1825, and (it seems) at the instance of Gregoire Sarpy, "who claims in his own right" (as appears from the survey), and was founded upon the supposed confirmation by Recorder Bates of "a league square" (7056 arpents); and this survey 1953 of 7056 arpents could not possibly have been within the contemplation of the parties to this deed of 1817 to Hunt; and if they had contemplated Bates supposed confirmation of "a league square" (as mistakenly made in 1816) it is reasonable to suppose that they would have named it as such in the deed, especially as it would more than *double the grant*, or, at least, would have used some language of description which would have indicated an intention to include it, in addition to the "two tracts" which were specifically described, or some intention to convey the whole *claim* of Gregoire Sarpy. Gregoire Sarpy died in 1824; his children all died before the patent was issued under the Act of Congress of 1842; and his grandchildren now insist that their ancestors never intended, by this deed of 1817, to sell, nor Hunt to buy, the entire *claim* of 7056 arpents, which he claimed in his own right and procured to be surveyed for himself, in 1818; and that he simply joined in that deed with his wife and the other four heirs of Madame Labaddie to convey his wife's supposed estate as heir of her mother in the "two tracts of land" therein described, which all parties then supposed she had inherited from her mother. It turns out that, in point of law and fact, they had inherited nothing from her, and that the deed conveyed no title whatever. Such being the case the defendant now seeks to make the deed operative in some way against Gregoire Sarpy and his heirs on the ground of estoppel on the title after acquired by them through the patent to the entire survey No. 1953, made in 1818 for 7056 arpents by the United States.

Upon this matter of construction as to what lands were conveyed, the court below made the following declaration of law: "The last mentioned deed [that of August 29, 1817] conveyed to said Hunt all the tracts of land therein described which had been previously confirmed, *and also* Sarpy's interest in all other tracts of land described therein to which said Sarpy had a claim under concession by the Spanish government." 4th Dec. of law.

This seems to declare in effect that the deed conveyed the two tracts of land that were therein described by metes and bounds, and *also* Sarpy's interest in all other tracts of land to which he had a *claim*, &c., and that such other tracts of land or *claims*, were described therein.

The very question was, what lands or tracts of land were described therein? And on this question the ruling decides nothing, unless it means to assume that such "all other tracts of land to which Sarpy had a claim" were described in the deed. This construction we say is erroneous.

This declaration further assumes erroneously (we submit) that Hunt, the purchaser, was dealing with Gregoire Sarpy, individually, for lands, titles, and claims held *in his own right*: whereas the true construction would seem to be that he was dealing only with the five heirs of Madame Labaddie (Sarpy's wife being one of them) for the lands and titles that were supposed to have descended to them from her, and were claimed by them as such heirs, tenants in common, and not otherwise.

The declaration is further erroneous for the reason that, at the date of the deed, the grantors had no right, title, or estate which could pass by the conveyance in the land in controversy.

3. What estate or title is warranted, or affirmed with such certainty of averment as to ground an estoppel on the after-acquired title.

a. In reference to the *second* clause of the granting premises (if it can be considered as separate), whatever land may be taken as the subject-matter of it, it is, in respect of the estate conveyed, clearly a grant only of "*all we are entitled to*" and no more; and it is simply a *quit claim* of a present interest; and, in such case, the warranty of the covenant is only co-extensive with the estate or thing granted, cannot enlarge the grant, and is no estoppel on the after-acquired title.

Jeffreys vs. Bushnell. 2 B. & Adl 281.
Adam vs. Bon, 1 Vroom. 507.
Comstock vs. Smith, 13 Pic., 116.
Wight vs. Shaw, 5 Cush., 56.
Blumhard vs. Brooks, 12 Pick., 67.
Pelletrean vs. Jackson, 11 Wend., 110.
Edwards vs. Varick, 5 Den., 665.
Bell vs. Twilight, 6 Poster, (N. H.) 407.
Pike vs. Galvin, 29 Me., 185.
Bogy vs. Shaub, 13 Mo., 380.
Valle vs. Clemens, 18 Mo., 486.
Gibson vs. Chouteau, 39 Mo., 566–7.
Rawle on Covts. for Title, 3d Ed., 409; 416–19 n. 4; 437.
3 Washb. R. P., 3d Ed., 404 (*665.)

b. If this *second* clause be properly regarded as only explanatory and restrictive of the kind of title or estate intended to be granted in the previous clause, or as intended to pass a possible residuum in the described lands by more general words, then the doctrine of these cases applies to the whole deed; and, consequently, the deed can be now estopped on the after-acquired title as to any part of the premises.

c. The defendant insists that the *second* clause purports to convey the whole "claim" of 6000 arpents as such, leaving the location and quantity of land to be ascertained thereafter by the United States survey and patent. But even if this were so, it would be wholly immaterial, for the reason that the clause cannot, upon any construction as to what land was the subject-matter of grant, work an estoppel on the after-acquired title, when the express purport, in respect of the estate granted, is only to *quit claim* and convey a present interest in that land.

Moreover, the recitals of the deed and stipulation of defendant refer to the claim of title derived under Sheriff's sale, and the

Sheriff's deed purports to convey only "a part" of the whole concession of 6000 arpents, containing 4002 arpents, more or less, and the Spanish survey, also referred to, actually contains less than 4002 arpents. This would seem to be conclusive against such pretension.

4. In reference to the *first* clause of the granting premises, it has been shown that the land granted (so far as involved in this controversy) was the distinct "tract of land" described by the metes and bounds of the Spanish survey, and "supposed to contain 4002 arpents, more or less," and that the only estate or title that was asserted, affirmed, or conveyed, in that tract, was the supposed right arising out of the concession of the 28th October, 1802, as limited by the "figurative plan of survey" and the supposed confirmation thereof.

a. Supposing Gregoire Sarpy would be estopped by the recitals in the deed, or by the covenant of warranty, to deny that he had such inchoate title by confirmation, at the date of the deed, nevertheless, such estoppel could operate upon the after-acquired title only to the extent of the definite "tract of land" so described by metes and bounds, and supposed to contain 4002 arpents, more or less; for that is all the estate, or land, that is affirmed in the deed by any positive and certain averment, and is all the land that is conveyed.

Metes and bounds control quantity:

Marshall vs. Bompart, 18 Mo., 84.
Orrick vs. Bowen, 29 Mo., 210.
Evans vs. Temple, 35 Mo., 494.
Campbell vs. Johnson, 44 Mo., 250.

This result would be the same, even if it were held that there was a valid confirmation in 1814 or 1816, or that the Act of Congress of 1842 and the patent were a recognition of the validity of such confirmation, so as to let in the doctrine of relation; for the relation could carry no more land than was conveyed by the deed. And the estoppel would be limited to this tract as a portion only of the whole survey 1953, being included within it.

b. We go further still and say, in reference to said tract, that such estoppel cannot, in any case, operate upon the after-acquired title beyond the extent of the one undivided *fifth*, which Gregoire Sarpy, as a tenant in common with the other grantors, held in right of his wife, and which estate and interest only be undertook to convey and warrant; for the warranty must be limited to the subject-matter of the conveyance and of the covenant.

The covenant here must be taken as several according to the nature of the transaction and the interests claimed, and not as a joint covenant of all the grantors *in solido* for an entire title, which they neither had, nor professed to have, jointly. The covenant being of the title "as above mentioned" which is fully detailed in the premises of the deed. Sendulin vs St

c. The principle is the same, when the warranty fails to operate an estoppel on the after-acquired title, because the granting premises are restricted to all the right, title and interest, which the grantor has, and where another estate in the same land is not described or conveyed at all, or where no estate of the grantor held in his own right is described or conveyed: in either case, there is no estoppel, because there is no subject to grant or warrant.

Cases above cited, and

Long Island R. Co. vs. Cachlin, 32 Barb. 388,

citing 2 Greenl. Cruise Dig., Tit. *Deed*, ch XXI, § 73, p. 349 (*273 of Vol. IV.); that "the *premises* is the part of the deed in which the thing or estate is granted," and that the covenant of warranty is limited in effect expressly to assure the title of the grantee to the land granted in the premises of the deed; "for," says the Court, "it would be absurd to make such a covenant in respect of lands the title to which still remained in the grantor." The same would be true where some particular estate, and not another estate, in the same land, is the subject of the conveyance.

In respect of Gregoire Sarpy, husband, covenanting to warrant his wife's title (if such may be the construction,) the covenant is personal and collateral, and can operate an estoppel on the after-acquired title of his heirs only by way of *rebutter*, and

Sheriff's deed purports to convey only "a part" of the whole concession of 6000 arpents, containing 4002 arpents, more or less, and the Spanish survey, also referred to, actually contains less than 4002 arpents. This would seem to be conclusive against such pretension.

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a. Supposing Gregoire Sarpy would be estopped by the recitals in the deed, or by the covenant of warranty, to deny that he had such inchoate title by confirmation, at the date of the deed, nevertheless, such estoppel could operate upon the after-acquired title only to the extent of the definite "tract of land" so described by metes and bounds, and supposed to contain 4002 arpents, more or less; for that is all the estate, or land, that is affirmed in the deed by any positive and certain averment, and is all the land that is conveyed.

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b. We go further still and say, in reference to said tract, that such estoppel cannot, in any case, operate upon the after-acquired title beyond the extent of the one undivided *fifth*, which Gregoire Sarpy, as a tenant in common with the other grantors, held in right of his wife, and which estate and interest only be undertook to convey and warrant; for the warranty must be limited to the subject-matter of the conveyance and of the covenant.

The covenant here must be taken as several according to the nature of the transaction and the interests claimed, and not as a joint covenant of all the grantors *in solido* for an entire title, which they neither had, nor professed to have, jointly. The covenant being of the title "as above mentioned" which is fully detailed in the premises of the deed. Sunderlin vs Struthers 47 Pa 424

c. The principle is the same, when the warranty fails to operate an estoppel on the after-acquired title, because the granting premises are restricted to all the right, title and interest, which the grantor has, and where another estate in the same land is not described or conveyed at all, or where no estate of the grantor held in his own right is described or conveyed: in either case, there is no estoppel, because there is no subject to grant or warrant.

Cases above cited, and

Long Island R. Co. vs. Cachlin, 32 Barb. 388,

citing 2 Greenl. Cruise Dig., Tit. *Deed*, ch XXI, § 73, p. 349 (*273 of Vol. IV.); that "the *premises* is the part of the deed in which the thing or estate is granted," and that the covenant of warranty is limited in effect expressly to assure the title of the grantee to the land granted in the premises of the deed; "for," says the Court, "it would be absurd to make such a covenant in respect of lands the title to which still remained in the grantor." The same would be true where some particular estate, and not another estate, in the same land, is the subject of the conveyance.

In respect of Gregoire Sarpy, husband, covenanting to warrant his wife's title (if such may be the construction,) the covenant is personal and collateral, and can operate an estoppel on the after-acquired title of his heirs only by way of *rebutter*, and to the extent only of assets descended from the father, and only to the extent and value of the subject conveyed and warranted, viz: *the one undivided fifth.*

Chauvin vs. Wagner, 18 Mo. 551.

In respect of the other four grantors, tenants in common, there is no after-acquired title whatever. There was no warranty in the Sheriff's deed; it was a nullity, and Gregoire Sarpy has conveyed nothing to them, with or without warranty. His covenant in the deed of 1817 is several, and not joint, in reference to them: it is not a covenant with them but with the grantee, and in respect only of the interest held by Gregoire Sarpy in right of his wife, and for himself, not for them; and is a covenant to "defend the right, title, possession and enjoyment of the said lands" "as above mentioned" both as to character of title and estate "mentioned" in the conveyance.

5. In reference to both clauses and the whole deed, in respect of the recitals and the covenant of warranty, and on the most favorable construction for the defendant, the question of an estoppel on the after-acquired title is essentially identical with the question whether Gregoire Sarpy and his heirs would be estopped by the mere fact of a conveyance in which he had affirmed by positive and certain averment that he was seized and possessed of the land, or of some certain and particular estate in the land described.

Renselaer vs. Kearney, 11 How. U. S. 297.
French vs. Spencer, 21 How. U. S. 228.
Gibson vs. Chouteau, 39 Mo. 569.
Rawle on Covts. 3d Ed. 407; 414 n. 1; 455-6, n. 1.

And then the averments must be positive and certain to every intent: mere implication, supposal, or loose inference, is not enough.

1 Smith's Lead. Cas. 119 (*38).
2 Smith's Lead. Cas. 536 (*45).

In Jeffreys vs. Bushnell, 2 B. & Ald. 281, the rule was defined thus: "It is a rule that an estoppel shall be certain to every intent, and therefore if the thing be not precisely and directly alleged, or be mere matter of supposal, it shall not be an estoppel: nor shall a man be estopped when the *truth* appears by the same instrument, or that the grantor *had nothing to grant* or only a possibility: Co. Litt. 352 b." Pargeltree vs. Harris, 7 Queen's B. 708; 19 Pick. 345; Neason vs. Clarkson, 2 Hare 173 —very strong in support of this proposition.

But this doctrine can be of no avail for the defendant, for the reason (as it has been shown), that the deed contains no positive and certain averment of seizin and possession of any particular estate, whether a fee simple or any lesser estate; but the estate conveyed is effectually restricted to such present title as the grantors had.

6. The *truth in law* supposed to be known by each party appeared by this deed of 1817 that the grantors had nothing to grant, and therefore, and for this reason alone, there can be no estoppel on the after-acquired title in this case. 8 Cowan 585; 51 Mo. 453.; 31 Penn. St. 334—conclusive on this point.

It distinctly appeared on the face of this deed, that the title which the deed purported to convey was based upon the concession of 28th October, 1802, limited by a figurative plan of a Spanish survey and a supposed confirmation of the same by authority of the United States; and in point of law the concession, survey, and confirmation were utterly *null and void.* All this was matter of law and equally open to both parties.

The magnitude of the interests involved and my conviction that in law and morals plaintiffs are entitled to recover, leads me at the risk of repeating much that I have already urged upon the court, to review this deed of 1817 from a somewhat different standpoint than already presented.

In the construction of this deed, as to what lands are conveyed by it, the intention of the parties is to be ascertained upon a review of the whole deed.

Clamorgan vs. Lane, 9 Mo. 470.
Jackson vs. McCracken, 14 John. 192.

The intention is to be gathered from the face of the deed, the nature of the estate held, the parties to it and the circumstances surrounding them at the date of its execution ; these will govern the construction. 2 Dow. & Clark (Ho. of Lords) 223 : Sc. 5 Bli. N. R. 75. We can therefore be aided in reaching a correct solution, by translating ourselves to the date of the deed and in the midst of the parties, and in the presence of the then surrounding circumstances inquire their intention. The parties to this deed were the first men in the valley of the Mississippi in point of wealth, intelligence and influence—Pratte and Chouteau were members of the American Fur company, Labaddie, though born in St. Louis, was a graduate of the Polytechnic school of Paris, and Wilson P. Hunt the grantee, agent of John Jacob Astor, and an historic character in the great commercial enterprises of those days. Gregoire Sarpy a man of large views and enterprising character stands foremost in the group of surroundings, which as to subject matter of this controversy may be stated in their order as follows :

1. An open concession of 6000 arpents had been made to said Sarpy, "to be taken on the River des Peres, *and* in the woodland domains of the King." Before the date of this deed Sarpy had satisfied his rights upon the River des Peres under this concession by having a survey made upon the same, supposed to contain 4002 arpents, and as the Spanish surveyor reports, had "reserved to himself the faculty of choosing the complement of his concession which is of 6000 arpents of superfices, in *one or more* vacant portions of the royal domain." So far then as the record shows, this survey was "all the land granted to Gregoire Sarpy on the River des Peres," which answers truthfully to these words in the deed of 1817 ; and became through such severance by survey "a tract of land." Residue of the concession would have lapsed to the government for non-survey under the authority of Menard's Heirs vs. Massy, 8 How. 599, and other decisions of this court, and could be in no sense a "tract of land" which the parties had in view at the date of this deed.

2. A deed for this surveyed tract of land from Jeremiah Connor, Sheriff of St. Louis county, upon a sale made upon execu-

tion against Gregoire Sarpy, to Pierre Chouteau was in existence, in which the property sold is described as "a certain tract of land, situate, lying, and being on the River des Peres, District of St. Louis, the same being a *part* of the quantity of 6000 arpents granted to said Sarpy as per concession from Charles D. Delassus, dated the 28th October, 1802, containing said tract 4002 arpents, being the same more or less," (this deed was void for want of proper acknowledgment.) But it is clear that it had in view the passing title to Chouteau, not of Sarpy's entire concession of 6000 arpents, but of that *part* of it which by survey would fall within the designation of "a certain tract of land on the River des Peres of 4002 arpents."

3. Of this "tract of land" there was in existence at the time a plat of survey called by the Spanish authorities a "figurative plat" on which all the lines are given in arpents, the terminal points fixed, the corner trees named and designated, and the lines marked on the ground by scoring the trees "with a blaze and two longitudinal cuts." That all parties to the deed of 1817, knew of this "figurative plan" is evident from the reference to it, in the deed of 1817.

4. Madame Labaddie had already received a deed from Pierre Chouteau and wife for *four* tracts of land, amongst them two tracts as follows "just as I have acquired them from Jeremiah Connor, Sheriff." "Another land of 4002 arpents situated on the River des Peres, and another land of 1400 arpents on the River Merrimac, these two last lands forming a *part* of a concession of 6000 arpents granted to said Gregoire Sarpy by Charles D. Delassus, on the 28th October, 1802"—this deed is dated in 1808.

5. Madame Pelagie Labaddie had died four years before, leaving five heirs, four daughters and a son; the daughters were married respectively to Bernard Pratte, Gregoire Sarpy, August Chouteau and John Little, the social companions of Wilson P. Hunt, and several of them co-laborers with him for many years in the fur trade of the great West.

The above are the principal facts touching the title to the land in controversy, its area, and the character of the estate held, and circumstances surrounding the parties in their relation to each other when the deed to Wilson P. Hunt was executed in 1817, and we insist are legitimate matters of consideration in giving construction to that deed executed by the heirs of Madame Labaddie for the land inherited by them, from her.

We now come to the deed of 29th August, 1817. This deed professes in the premises to deal with "two tracts of land," and not with an open "concession," or with an undefined "claim." The tract in controversy is described by metes and bounds, and "supposed" area and the "Figurative plan" of survey thereof is recited in the deed, and the deed from Chouteau and wife to Mad. Labaddie dated 30th June, 1808, is also recited as is also the concession of 28th October, 1802, to Gregoire Sarpy and the certificate of survey made thereof. These recitals which all show that but a *"part"* of the concession was being dealt with make the respective papers, and records referred to and recited, as much a part of the deed for the purpose of identifying the land sold, as though they were incorporated *in extenso* in the deed. van Rensselaer vs Kearney 11 How

Glenn vs. Shields, 32 Barb., 374.
Seward vs. Malotte, 15 Cal., 304.
Noonan vs. Lee, 2 Black. U. S. 499.
Birmingham vs. Anderson, 48 Pa. 253.
Rockwell vs. Baldwin, 53 Ills., 19.
Dow vs. Porter, 3 Ark., 18;

this last is a strong authority in plaintiffs' favor.

A reference to the "Figurative plan" thus by recital made a part of the deed, shows that the lines of the Spanish survey on the ground are accurately described as defining the land sold in the deed, when we convert arpents into perches, a French arpent being 10 perches French measure. The starting point of description, both in "figurative plan" and "deed," is "a stone on the South Bank of the River des Peres":

First line of Spanish survey is south 14 arpents; first line of land described in deed is south 140 perches; second line in survey is west 51½ arpents; second line in deed, is west 515 perches; third line in survey is south 12 arpents; third line in deed is south 120 perches; fourth line in survey is west 16½ arpents; fourth line in deed is west 165 perches; fifth and last line in survey north 89 arpents; fifth and last line in deed is north 890 perches. Both survey and description by deed, terminate this last line at a "white walnut tree" on the bank of the river, thence down the stream to the place of beginning. Thus it is clear, from the lines that the land in the *deed* corresponds exactly with the land in the survey, and in survey is stated at 4002 arpents and in the deed it is cautiously "supposed" to contain 4002 arpents "more or less." Now what land is thus conveyed? The deed from Chouteau and wife to Madame Labaddie, incorporated by recital into the deed of 1817, says it is "*a part*" of the concession of 6000 arpents; the same fact is recited in the attempted deed from Sheriff Connor to Chouteau. This description of the land as embraced in the deed is truthfully "all the land on the said River des Peres, at any time granted to Gregoire Sarpy under the authority of the Spanish Government," as recited in the deed of 1817, as "one" of the "tracts of land" intended to be conveyed by it.

The "figurative plan" and Chouteau's deed to Mad. Labaddie referred to in the deed of 1817, showing that it was but a "part" of the concession and character of the estate, course of title
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Jackson vs. Carver, 4 Pet., 82.
Robbins vs. McMillan, 26 Miss., 4 Cu
Crane vs. Lessee of Morris, 6 Pet. 610.
Picot vs. Page, 26 Mo., 415.

The deed of 1817 is executed by all the heirs of Madame Labaddie who claim to have inherited the land they sell from their mother, through a chain of title recited in the deed—no attempt is made to deed that portion of the concession located upon the river Meremac of 1400 arpents by any description thereof. If the Spanish survey described in the deed as coming through Sarpy's concession can be found in its starting point and

and circumstances surrounding the parties in their relation to each other when the deed to Wilson P. Hunt was executed in 1817, and we insist are legitimate matters of consideration in giving construction to that deed executed by the heirs of Madame Labaddie for the land inherited by them, from her.

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The "figurative plan" and Chouteau's deed to Mad. Labaddie referred to in the deed of 1817, showing that it was but a "part" of the concession and character of the estate, source of title and property sold by the deed are evidence as notice to Hunt and all subsequent purchasers, under him, by which they are estopped from denying the limits of the grant. Same recitals in all the Deeds conclusively show character in which they convey

Jackson vs. Carver, 4 Pet., 82.
Robbins vs. McMillan, 26 Miss., 4 Cush. 434.
Crane vs. Lessee of Morris, 6 Pet. 610.
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The deed of 1817 is executed by all the heirs of Madame Labaddie who claim to have inherited the land they sell from their mother, through a chain of title recited in the deed—no attempt is made to deed that portion of the concession located upon the river Meremac of 1400 arpents by any description thereof. If the Spanish survey described in the deed as coming through Sarpy's concession can be found in its starting point and the lines accurately run and determined by courses and distances of the deed, the boundaries must be settled by their calls.

Waugh vs. Waugh, 28 N. Y. 1 Tiffany, 94.
Nutting vs. Herbert, 35 N. Y. 121; 12 La. An. 30.
Melvin vs. Proprietors of Locks, 5 Met. 29.

Upon the facts as found, how can the western line of this Spanish survey be drawn so far west as to embrace 1631 arpents of land more than is really within the boundaries of the calls? The "figurative plan" is an irregular survey—the western lines of which must be extended far to the westward of the calls in the deed to include this large body of land now in our patent, but at the date of the deed public domain never severed either by a Spanish or other survey.

In ascertaining the location of the Spanish survey described in the deed as sold, the western line, as all others run and marked by the Spanish surveyor, and identified upon the ground by Couzzins the surveyor as specially found by the court, are as binding as the eastern boundary, the river. It is only in cases of conflict that a natural monument, as a line, will prevail over calls and marked lines on the ground. Has the grantee the right to extend westward to get the area of 4002 arpents? This quantity of land is not asserted or warranted to be within the boundaries described in the deed—but the grantors have cautiously guarded against such conclusion by declaring that the tract sold and described by limits is "supposed to contain 4002 arpents, more or less," and the grantee has accepted the deed in this form—a retracing the lines in 1817 by either party would have disclosed the error in area of the survey sold: but each party seems to have been content with fixing a "supposed" area; if "more" the grantee to take it, if "less" to suffer the loss by his own act.

"Lands sold by metes, bounds and dimensions, the purchaser takes only the land within the boundaries, quantity is but description and yields to metes and bounds."

Jennings vs. Monk, 4 Met. 103; 30 Ills. 279.
Krupe vs. Scripp, 11 Ills. 102.
Powell vs. Clark, 5 Mass. 355.
Jackson vs. Borroughs, 15 John. 471.
Orrick vs. Bonner, 29 Mo. 210.

Expression "more or less" cannot enlarge boundaries: Vogue vs. Allen, 3 J. J. Marshall 421. The rules of construction in Missouri are very ably put in Picot vs. Page, 26 Mo. 418, and we think conclusive in our favor. Upon this point see also "Arredondo's" case, 6 Pet. The deed of 1817 conveys "two tracts of land," one surveyed upon the concession to Sarpy, the other upon the concession to Camp & Reihle. The first tract in the deed is described as "a concession" though it was but "*part*" of it, and is supposed to contain 4002 arpents, the second 1632, aggregate 5634 arpents, but really containing but 4195 arpents. These "two tracts of land" were supposed by the parties to be confirmed by the U. S., and to have descended to the grantors as heirs of Madame Labaddie. The two tracts were sold for a gross sum by the parties professing to sell as her heirs, yet defendants contend that this deed must be so construed as to pass 7056 arpents in the patent with the 1632 of the Reihle concession, equal to 8688 arpents, being 4493 arpents more than is described in the deed, and not an inch of this *great excess* ever belonged to Madame Labaddie's heirs—could it have been the intention of the grantors in raising this gross sum of $20,000, that four of them only intended to sell what they had inherited, but that the fifth not only intended to convey his wife's interest by descent—but as a kind of make-weight would pass a possible individual contingency in the future by which he in his own right or his heirs as legal representatives might a half century later become the owners of 4493 arpents of land? Can this construction be put upon the deed from the face of the deed and surroundings of the parties at its date? Defendants insist upon this construction and base their pretension enclusively upon what they designate the second granting clause of the deed, in these words: "and *we* do *hereby* give and grant, bargain and sell, alien, release and confirm to the said Wilson P. Hunt, his heirs and assigns forever, all the *lands* which *we* may be entitled to *in virtue of said concessions*, or of the confirmation whereby the same *was* confirmed to the said Gregoire Sarpy by *the Board of Commissioners of the United States*, and the act of the President and Congress of the United States." Through this effusion of the old Spanish Scrivener Guyol in the conclusion of the granting premises after an accurate description of the property sold has been given, construction is required to enlarge the grant to more than *double its actual area*, and to enlarge it not out of the estate of the grantors, but out of the *separate* estate of one of them subsequently acquired, if the patent can be held in any sense to have ever placed the title in Gregoire Sarpy. Parties never could have contemplated such intention. They never owned the land proposed to be covered! As "land" subject to private grant it had no existence, it was then public domain and neither party to the deed could have had it in view.

But there are facts on the face of the deed responsive to every material allegation in this general clause, which limit its effect to the intention of the parties, and make it an aid to effectuate their purposes instead of a pitfall to the unwary.

If this clause can be made responsive to the description of the property upon the whole deed, the Court will give it that construction, instead of passing by it a *third* tract of land, in face of the fact that but "two tracts" of land were the subject matter of the conveyance.

I have already examined this clause of the deed as a "sweeping" one, and shown that as such it cannot effectuate the ends claimed by defendants. But when we subject it to analysis its impotency to *enlarge* the grant is too apparent almost for argument.

I have shown that at the date of this deed, the words "grant, bargain and sell," imported no covenant by statute. This clause must then be understood according to common law principles, and operates but a "quit claim" of a then subsisting interest, if it can be construed as independent of the general premises of the deed. The clause is not preceded by any words as "also" "in addition to," or words of equivalent import, showing intent to enlarge the described grants in the premises; but commences "and *we* do *hereby*," that is, "*We*" as grantors, the heirs of Madame Labaddie; do "hereby," that is, *by this deed*, by what has gone before, as well as by what follows, *the entire deed*, do grant, bargain, &c., "all the lands," These words must be understood, as distinguishing what is granted from "claims" or "concessions," and is referable to the two "tracts of land" in the premises, and again repeated in the habendum, which *We* may be entitled to; "*We*" as heirs of Madame Labaddie, "entitled to," as we have already shown by defining our title in the preceding premises "in virtue of the said concessions," before recited in the deed, "concessions" in the plural to cover the one to Sarpy and the other to Camp & Reihle "or of the confirmation whereby the same *was* (in the past tense) confirmed to Gregoire Sarpy by the Board of Commissioners"—all this has reference to the "said concessions," before described in the premises, as confirmed by the Board of Commissioners and limited to the "figurative plans of survey" therein described. The habendum immediately following is "to have and to hold the *said two tracts of land*" "arising out of or accruing from the said concessions or confirmations," etc. Do not these words show the plain intent of the grantors in the whole deed to confine their grant to the *two tracts of land described by figurative plans*, as these were all the "lands" on the River des Peres at the date of the deed "arising out of or accruing from the said concession." Covenant of warrantee is of "the said *lands*, and all privileges and advantages thereto appurtenant, or arising out of, or accruing from the same *as above mentioned*." "As above mentioned"—how? Defined by figurative plans, sold by Sheriff to Chouteau, by Chouteau to Madame Labaddie, and on her death descending to us, her heirs. Is not this construction the rational and legal one upon the entire instrument, effectuating the intent of the parties? Is any other possible in accordance with well established rules of construction. How can the Court under general words pass title to a tract of land, which did not exist at the time, but was Government unsurveyed soil. The land in the patent cannot pass by the deed under the words of the warrantee "thereto appurtenant," as land can never be appurtenant to land. In Jackson vs. Hathaway, 15 John. 454, the Court says: "It would be absurd to allow the fee of one piece of land not mentioned in the deed to pass as appurtenant to another distinct parcel which is granted by precise and definite boundaries." See also Whiting vs. Duvey, 15 Pick., 433; 10 Met. b. 55.

But notwithstanding the absence of words introducing this general clause indicating an intent thereby to enlarge the grant, let us view it from defendants' standpoint. It is a *quit claim* of all the land we may be entitled to (are entitled to) in virtue of said concession or confirmation. This particular concession being *void* for want of power to make it, and if not for this reason, void for uncertainty of location, as it was an open concession "on the River des Peres" which is shown by the geography of the country to be some thirty miles long without designating where, and "in the woodland domains of the King" embracing the entire range of unappropriated lands in Upper Louisiana: this clause therefore must be held, if enlarging the grant, as appropriating the lands embraced in the *two surveys* which were made in "virtue of the concession" by the Spanish authorities, the one on the "River des Peres" and the other on the "River Merrimack." But this general clause can be held to manifest no further intent than to pass all possible rights in the land described, which would seem to be reasonable (as both "concessions" are named). But as the deed from Chouteau to Madame Labaddie conveyed to her both surveys made under the concession, and her heirs were equally entitled to each, that construction of the clause confining it to those two surveys which were made in virtue of the concession, would not be so great a license as to appropriate through it the land in our patent which never had any connection with the concession. But even this construction, the most favorable defendant could urge, cannot be adopted and for the reason, that the deed from Chouteau to Madame Labaddie (page 20 of record) recited in the deed of 1817, contained *four* distinct tracts of land, *two* of them Spanish surveys on this 6000 arpent concession, made 8 miles apart, one on the River des Peres and the other on the Merrimac, and each confirmed *in place* by the 1st section of the act of 1814, if either of them was; this fact was also shown by concession and Soulard's report of its location, and must be held to have been known by all the parties to the deed. Yet the deed describes with minuteness *two* of the tracts in said deed of Chouteau by their "figurative plans," and is wholly silent as to the *third* tract on the Merrimac, which at that date equally existed by a "figurative plan" Is not the conclusion irresistible that the parties, by not alluding to it, intended to exclude it—rather than that they intended in a sweeping generality of phrase to embrace this distinct and distant tract, which would have been so easily described by its "figurative plan," as was done in reference to the tracts intended to be conveyed by the deed. That the concession as an independent source of title under any circumstances without Spanish survey was void for uncertainty has been frequently decided in the Florida cases. U. S. vs. Forbes, 15 Pit. 180; U. S. vs. Delpine's Heirs, 15 Pit. 328; Buyick vs. U. S., 15 Pit. 220; U. S. vs. Lawton, 5 How. 27. Smiths case 19 Pit

The construction contended for by defendants would pass the title to the west half of the Camp & Reihle concession, to which counsel on the other side well know Bernard Pratte, one of the grantors in deed of 1817, succeeded shortly after its execution. But that the words in this general *residuum clause* must be referred to the "concession" as already described in the premises of the deed, is directly decided by the Supreme Court of Missouri in Bogy vs. Shoab, 11 Mo., 365, if authority upon so plain a proposition were required.

I have thus attempted to place the interests intrusted to my protection as the natural guardian of one of the plaintiffs upon such solid legal grounds as occurred to me, and submit this brief with a

Recapitulation of General Results.

1. The concession of 6000 arpents to Sarpy, 28th October, 1802, by a Spanish Governor was void for want of power to make it and created no *incomplete* title in him; and was properly *rejected* by the Commissioners in 1811.

2. If said concession had created an incomplete title, held to be confirmed by the act of 1814, as the same was an open concession, such *incomplete* title thus confirmed must be confined to the two surveys made by the Spanish authorities, one on the River des Peres and the other on the Merrimack; residue of the concession passed in absolute fee to the United States by the treaty of Paris.

3. If it is held that the act of April 12, 1814, operated a confirmation of any part of this concession, then its operation must be confined to the *two surveys in place*, and the fee to these two surveys remained in the United States until a patent for them issued.

4. The act of Congress of April 29, 1816, has no application either to the said concession of 6000 arpents or the two surveys made upon it by Soulard.

5. The deed of 1817 conveyed all the interest of the heirs of Madame Labaddie in the Spanish survey upon the River des Peres, derived through the chain of title therein specified.

6. This supposed interest being derived through a *void* Sheriff's deed, could create no "legal representatives" of the judgment debtor through it, to the Spanish survey attempted to be sold, even if the act of 1814 should be held to confirm it in place as surveyed.

7. The survey No. 1953, made in 1818, is a United States survey, though made without legal authority, and derives no force or efficacy through the void concession of 28th October, 1802.

8. The act of Congress of 1842, authorizing a patent to be issued for survey 1953, conferred no title upon any one. It imposed a public *duty* upon an officer and might have been repealed before the patent issued, without invading any equitable right created by it. Rice vs. R. R. Co., 1 Black. 360.

9. Patent of February 1, 1869, to Gregoire Sarpy *or* his legal representatives for survey No. 1953, was the first grant of the land in question, and is an American title, pure and simple, granted by Congressional authority.

10. If these conclusions are legitimate legal deductions from the facts, it then follows that as no title was out of the United States in 1817 to the land embraced in U. S. survey No. 1953, that the deed from the heirs of Madame Labaddie to Wilson P. Hunt, of 1817, *as a conveyance*, passed no estate in the said land and could not operate to create thereby "legal representatives" of Gregoire Sarpy, within the meaning of the patent.

1. Hence the defendants can claim no estate in the subsequently acquired title except by *enurement* operating through the patent by estoppel and relation.

Recapitulation of Results as to Estoppel and Relation.

I. There cannot be in any case an estoppel upon the after-acquired title, beyond the specific tract of land described by metes and bounds of the Spanish survey, and supposed to contain 4002 arpents ; nor can relation be had in any case beyond that described tract.

II. Even as to that tract of land there can be no estoppel on the after-acquired title in this case beyond the one undivided *fifth* interest claimed and conveyed by Gregoire Sarpy as tenant in common in right of his wife ; nor can relation in any case go beyond that interest.

III. That the whole deed of 1817, in respect of the estate conveyed, is a *quit claim* only of a present supposed interest derived through a title specially set forth, which in law was an impossible one, and therefore there can be no estoppel on the after-acquired title as to any part of the subject-matter.

IV. That on the whole deed of 1817 and its recitals it manifestly appears by the same instrument that the grantors had *nothing* to grant and that therefore there can be no estoppel on the subsequently acquired title in this case ; as the *truth* in law appeared upon its face.

V. No relation can be had through the deed of 1817 for the reason that at the date of the deed there was no valid inceptive right in existence which could pass by it : and

VI. On the whole case the law pronounced in Neeson vs. Clarkson, 2 Hare, 173, approved in Picot vs. Page, 26 Mo., 415, applies to the defendants. "Every purchaser is presumed to have investigated and known his vendor's title ; and if nothing more were found in this case than the mere fact that the purchaser took a conveyance in 1817, *and upon inspecting the title which was presumed to be conveyed to him, it appeared that it was one which in truth gave no title to the vendor* the court would consider the *onus* thrown upon the purchaser, why he did not inquire into that title with a view to his protection.

It appears to me indispensably necessary that such should be the law of this court, for otherwise a purchaser might take a title shutting his eyes to a defect in it, and then on the ground of absence of actual knowledge, require this court to pronounce a judgment in his favor, against the right of the party justly entitled to the estate, when nothing but willful blindness or culpable negligence could have prevented him from knowing the real state of the title."

VII. The act of Congress of 1842, authorized a patent to issue to Gregoire Sarpy *or* his legal representatives for a tract of land to which he never had title, legal or equitable—he died in 1824. His heirs in being in 1869, when the patent issued, take by direct purchase as original grantees of the government and not by descent.

Results as to the finding of the Court below.

1. The *first* declaration of law is erroneous in not finding the paper called a Sheriff's deed to Chouteau *void*, instead of declaring it "inoperative as a conveyance."

2. The *second* declaration of law is erroneous in its application to this case—it is as follows: "Said deed is admissable in evidence as explanatory of the subsequent conveyances which expressly refer to it." Neither the deed from Chouteau to Madame Labaddie, nor the deed of 1817 to Hunt, make the slightest reference to the deed from Sheriff Connor to Chouteau; therefore the "subsequent conveyances" do not "expressly refer thereto."

3. The *third* declaration of law is erroneous in declaring that the deed "dated 29th of August, 1817, was a confirmation by said Sarpy of the sale by Sheriff Connor in 1808 to Pierre Chouteau"—and even if it was a confirmation of the Sheriff's deed, it passed no title, for Sarpy had none to pass.

4. The *fourth* declaration of law is erroneous in not deciding what "tracts of land therein described which had been previously confirmed" passed by said deed, and also in not deciding what "other tracts of land described therein to which Sarpy had a claim under concessions from the Spanish Government" were embraced in said deed, thus leaving the parties unenlightened by the Court upon the questions in controversy before it.

5. The *fifth* declaration of law is a corollary from the four preceding, and simply decides the whole law of the case to be with the defendant and against the plaintiffs; and the plaintiffs insist upon the various points and authorities above given and cited, and submit that the decision of the Court below is erroneous.

JAS. L. D. MORRISON, Att'y for Plffs.

STIPULATION OF PARTIES.

In the above-entitled cause, in order to facilitate a hearing with as little inconvenience to the parties as possible, it is stipulated and agreed as follows, between the parties to the above suit, through their respective counsel, to-wit:

First. That Gregoire Sarpy died in Saint Louis, in the year 1824, leaving three sons as his heirs, as follows, John B. Sarpy, Peter A. Sarpy, and Thomas Sarpy.

Second. That on the 11th day of August, A. D. 1842, both the said John B. Sarpy & Peter A. Sarpy were living.

Third. That afterwards, and before the first day of February, A. D. 1869, each of them had departed this life, having by last will and testament devised their entire estate, real and personal, to Virginia, John R., and Adele S., sole children of John B. Sarpy, at the time of his death, and nieces and nephew of Peter A. Sarpy, at his death.

Fourth. That the said John R. Sarpy died single and without issue, after the death of his said father and uncle, devising by last will his entire estate to Virginia S. Berthold, since intermarried with Armand Penquet, and to Adele S. Morrison, wife of James L. D. Morrison.

Fifth. That the said Armand Penquet, and Virginia S. Penquet have conveyed all the interest and title of the said Virginia in and to survey No. 1953 to James L. D. Morrison before the commencement of this suit.

Sixth. That the said Edward Abend is a trustee, succeeding under the agreements of a certain marriage contract between James L. D. Morrison and Adele S. Morrison, his wife, and claims no beneficial interest in this suit in his own right.

Seventh. That at the time of the commencement of this suit the said William H. Benton was in possession of, and claimed title to, and still is in possession, under claim of title, of $779\frac{25}{100}$ acres of the land sued for and known upon the recorded plat of the McKenzie subdivision of said survey, as lots numbered 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 36, 37, 38, & 40, containing in the aggregate $779\frac{25}{100}$ acres, which said lots of said subdivision are within the out-boundary lines of said survey 1953, and said Benton claims to possess and own said land under a sale, on executions against Gregoire Sarpy, of the right, title, and interest of Gregoire Sarpy in and to a certain tract of land, described in the Sheriff's deed therefor, (made on the 9th day of

March, 1808,) and evidenced by the deed of Jeremiah Connor, sheriff of St. Louis County, dated June 29th, 1808, to Pierre Chouteau, which deed was duly recorded in the recorder's office of St. Louis County, August 28, 1813, and a duly certified copy thereof may be read in evidence, if the original deed could be read in evidence, as duly executed, without producing the judgments and executions therein recited; subject, however, to any legal objection or exception which may be taken by plaintiffs to the sufficiency of the execution or acknowledgment of said deed, or of such deed to pass title to the premises or any part thereof described in the plaintiff's petition.

Eighth. That said land so conveyed or attempted to be conveyed by Jeremiah Connor, sheriff, to Pierre Chouteau was by the said Pierre Chouteau and Lancier Chouteau, his wife, by deed dated June 30, 1808, and duly recorded August 28th, 1813, in the recorder's office of St. Louis County, conveyed or attempted to be conveyed to Madame Pelagie Chouteau, widow Labaddie, and a duly certified copy of which deed may be read in evidence, if the original could be, without further proof of its execution, subject to any and all legal exceptions which may be taken to the sufficiency of the execution or acknowledgment of said deed, or of said deed to pass title to the land or lands described in the plaintiff's petition.

It only being the intention of the parties in reference to this and the last-recited deed to waive all questions which might arise upon the judgments and executions and the sufficiency of the executions issuing thereon, upon which the right, title and interest of the said Gregoire Sarpy in the lands described in said deed were sold.

Ninth. That Madame Pelagie Chouteau, widow Labaddie, under whose heirs defendant claims title to the land in suit, died some time during the year 1813, leaving as her sole heirs four daughters and one son, viz, Emilia, who married Bernard Pratte, Sophia, who married August P. Chouteau, Antoinette, who married John Little, Pelagie, who married Gregoire Sarpy, and Sylvester her son. The said Gregoire was the same person to whom the land was conceded by Delassus, lieutenant-governor, in 1802.

Tenth. That those are the same parties who executed their deed dated August 29th, 1817, to Wilson P. Hunt, which deed was recorded in the recorder's office of St. Louis County, Sept. 1, 1817, in book F, page 381, and under and through which deed the defendant also claims title to the land which he is in possession of as stated in his answer and in the petition mentioned by mesne conveyances, commencing with a deed dated November 7, 1836, from Wilson P. Hunt and wife, to John Jacob Astor, and it is admitted that all of the grantors in said deed died prior to February 1, 1869.

This admission on the part of plaintiffs, like the two last, shall not be held to bar or preclude them from objecting on the trial to the sufficiency of the execution or acknowledgment of said deed, or denying on the trial that said deed passed the title to the land in question, or any portion of it, or estop them from taking any legal exception as to the force and effect of said deed on the hearing, or its legal admissibility from facts disclosed upon its face.

Eleventh. It is further agreed that the said Benton and the parties under whom he claims title, and claims said land, have for more than ten years next before the commencement of this suit been in the actual, quiet, uninterrupted, continuous possession of said lots of land under claim of title thereto, adverse to all the world.

But nothing in this stipulation or admission shall be so construed as to estop the plaintiffs from maintaining and showing on the trial by evidence and the law, that as to the land in question the statute of limitations has not run as a bar against the said plaintiffs, or those under whom the plaintiffs claim title.

Twelfth. That if the plaintiffs are entitled to recover the whole or any portion of the land in survey No. 1953, possessed and claimed by the defendant, that the plaintiffs will be entitled as damages to one dollar, and that the monthly value of said premises recovered is fifty dollars.

Thirteenth. That the plaintiffs only claim title to an undivided two-thirds part of the land claimed and possessed by defendant in survey No. 1953, and every part and parcel thereof, and that if they are entitled to recover their said interest so claimed in said survey or any portion thereof that said interest is two-thirds thereof.

Fourteenth. That the admissions, agreements, and stipulations herein contained have been made and entered into to facilitate the trial of this cause upon its merits, and are not to be set up, plead, or relied upon as an estoppel or otherwise against either of the parties thereto in any other suit which may arise between them or their privies, but are to apply in this suit only in which they are agreed upon for the purposes aforesaid.

JAS. L. D. MORRISON,
For himself & as Att'y for his wife.

KRUM & PATRICK,
Att'ys for Deft.

Declaration of Law by the Court below.

Upon the foregoing facts the Court declares the law to be—

First. That the foregoing deed of Jeremiah Connor, sheriff, to Pierre Chouteau, dated June 29th, 1808, is inoperative as a conveyance. because it was not acknowledged as required by the laws then in force.

Second. Said deed is admissible in evidence as explanatory of the subsequent conveyances which expressly refer thereto.

Third. The deed of Bernard Pratte and others to Wilson P. Hunt, (including Gregoire Sarpy and wife among the grantors,) dated the 29th of August, 1817, was a confirmation by said Sarpy of the sale by Sheriff Connor in 1808 to Pierre Chouteau.

Fourth. The last-mentioned deed conveyed to said Hunt all the tracts of land therein described which had been previously confirmed, and also Sarpy's interest in all other tracts of land described therein, to which said Sarpy had a claim under concessions by the Spanish government.

Fifth. That by virtue of said last-mentioned conveyance the grantees under said Hunt to said land and claims, became the legal representatives of Gregoire Sarpy, as to the premises in dispute, through survey No. 1953, the patent certificate No. 1033, said act of Congress approved August 11th, 1842, and the patent dated February 1st, 1869, and said legal representatives acquired the title to all the tracts of land in said patent described.

Sixth. The title to the premises in dispute, thus acquired from the United States by said legal representatives, passed by operative and valid conveyances to the defendant.

Whereupon the court declares that the plaintiff is not entitled to recover, and orders judgment to be entered for defendant, with costs.

APPENDIX.

1. Date of Treaty of St. Ildefonso, showing cession by Spain to France of Louisiana, October 1, 1800.

2. Concession of Gov. DeLassus a Spanish Governor to Gregoire Sarpy of 6000 arpents, October 28, 1802, and Soulard's two surveys made upon it.

3. Deed of Sheriff Conner, to Pierre Chouteau of one of the surveys.

4. Deed from Pierre Chouteau to Madame Labaddie for one of the surveys.

5. Claim of Gregoire Sarpy before the commissioners, of the two surveys in concession, and their *rejection* by commissioners, December 9, 1811.

6. Deed from the Heirs of Madame Labaddie to Wilson P. Hunt, 1817.

7. Act of Congress authorizing a Patent to Gregoire Sarpy or his legal representatives.

8. Patent reciting Langham's survey, made in 1818, on which the Patent issued.

(1) TREATY OF CESSION.

On the 1st October, 1800, by the Treaty of St. Ildefonso, Spain ceded Louisiana to France in full sovereignty. So that when the following concession was made by a Spanish Governor, the land covered by the concession belonged to France and not to Spain.

(2) CONCESSION.

MR. CHARLES DEHAULT DELASSUS, Lieutenant-Governor and Commandant-in-Chief of this part of Illinois:

Mr. Gregoire Sarpy, inhabitant of this city, has the honor to represent to you that, having constructed a mill for superfine flour, and said mill having by its erection led him into very extensive expenses, in order to recover a little more completely from his expenses and advance the utility of said establishment to the highest degree, he has caused to be added to this first mill another to saw timber, which will be of great advantage for the upper part of this colony; but said establishment being entirely out of timber, he begs you, sir, to concede to him the quantity of 6,000 arpents of land in superficies to be taken from along the River des Peres, and in the woodland parts that belong to the domain of the King; having to observe to you that these lands being extremely cut up and hilly, the wood is only found in clusters more or less large. The petitioner, convinced of the interest you show for all establishments useful and advantageous for the public, hopes this favor of your goodness.

(Signed) GREGOIRE SARPY.

St. Louis, October 26, 1802.

ST. LOUIS OF THE ILLINOIS, October 28, 1802.

Having seen the above, and whereas it is to my knowledge that in the neighborhood of this city and in the establishment possessed by the petitioner, he does not make much building lumber, and it is indispenble that he may make some profit of his enormous expenses in said construction, which will become of public utility, I do concede for him and his heirs the land which he solicits, if it does not prejudice to any person, and the Surveyor of this Upper Louisiana, Mr. Antoine Soulard, will place the interested party in possession of the quantity of land which he asks in the indicated location. This done, he will make a plan which he will deposit at this post, and a certificate, which will serve to obtain the concession and the legal title from the Intendant-General, to whom belongs particularly by royal decree the granting and conceding of all the classes of vacant lands.

(Signed) CHARLES DEHAULT DELASSUS.

1st Survey.

NOTE.—The limits placed at all the angles, and the boundaries at 20 arpents between each other, are all indicated in the figurative plan: all the trees on the lines are distinguished with an upper blaze and two inferior longitudinal cuts, and those to right or left blazed only. Entered in Book B of the Expositions of Surveys for this part, Fo. 5 No. 3.

I, Antoine Soulard, Surveyor Part., of the Upper Louisiana, do certify that a land of 4,002 arpents was measured, marked and limited in favour and in presence of Gregory Sarpy, the said gentleman reserving to himself the faculty of choosing the complement of his concession, which is of 6,000 arpents of superficies, in *one* or *more* vacant portions of the Royal domain, measured with the perch of the city of Paris of 18 linear King's feet measure of the said city, in this province.

The said land, situate at about 8 miles from the Merrimac river ford, and at the same distance S. W. of said city of St. Louis, is bounded as follows: On N. in part by the unclaimed lands of the Royal domain, and by the lands of Mr. Charles Gratiot and of Mrs Widow Camp, on S. and W. by the lands of the Royal domain; on E. in part by the aforesaid Royal domain and the lands of the same owners aforesaid. Said surveys and measures were made without touching the variation of the magnetic needle, which is 7 deg. 30 min. E. as it is ascertained in the figurative plan, which precedes, in which are noted the dimensions and rhumbs of the limits and other landmarks, &c. Said survey was performed in virtue of the Royal degree of Sir Lieut.-Governor and under-delegate of the Royal domain, Chs. Dehault Delassus, dated October 28 of the last year, to which is joined the title of property, and in order that all which is referred to it be acknowledged, I do give these presents, with the figurative plan which precedes, according to diligences practiced by the Lt. Surveyor, Mr. James McKay, in date of March 18, 1803.

2nd Survey.

NOTE.—The landmarks put at the four angles are indicated in the figurative plan. All the trees on the lines are distinguished with a blaze superior and two longitudinal cuts inferior, and those on the right and left blazed only. Entered in Book C of the Exp. of Surveys for this part Fo. 63 No. 63.

I, Antoine Soulard, Surveyor part., of the Upper Louisiana, do certify that a land of 1400 arpents of superficies was measured, limited and bounded in favour of Mr. Gregoire Sarpy, in presence of the Lieut. Surveyor as attorney of said owner, it being a part of the totality of 6000 arpents of superficies which was conceded him as it is ascertained by data here expressed; of said quantity, a part of 4002 arpents of superficies was previously measured at the River des Peres, as shown by the certificate of the two surveys that I enter. The totality of the two surveys makes 5402 arpents of superficies to which lacks the quantity of 598 arpents to complete the totality of the 6000 arpents which were conceded to him by the Lieut. Governor, which were measured with the perch of the city of Paris of 18 linear King's feet of the same city, according to the agrarian measure of this Province. The said land is situated at about 20 miles S. W. of St. Louis, bounded E. N E., S. S. W., E. S. E., W. N. W. by the vacant lands of the Royal domain. These surveys and measures were made without regard to the magnetic needle which is 7 deg. 30 min. E. as shown by the figurative plan which precedes, in which are indicated the dimensions and rhumbs of the landmarks and other limits, &c. The said survey is made in virtue of the degree of C. D. Delassus, Lieut. Governor and Sub-Delegate of the Royal domain, dated October 28, 1802, which is annexed thereto, and for all which as above, I do give these presents with the figurative plan which precedes, drawn in conformity to diligencies made by the Lieut. Surveyor, Mr. John Terrey, in date of January 2, 1804, who signed the minutes of what I give.

(Signed) ANT. SOULARD, Surv. Part.

St. Louis of the Illinois, April 15, 1804.

Both this concession and the *two* surveys were absolutely void: See

U. S. vs. Dautrive, 10 How 609.

U. S. vs. Reynes, 9 How. 127.

Davis vs. Police Jury, 9 How. 140.

Act of Congress 26 March, 1804, 2 vol. U. S. S. 287. Sec. 14, declares both the grant and surveys "void in law or equity."

(3)

DEED,

JEREMIAH CONNER, SHERIFF, TO PIERRE CHOUTEAU.

To all to whom these presents shall come, I, Jeremiah Conner, Sheriff of the District of St. Louis, send greeting: Whereas, writs of fieri facias were the thirteenth day of November and the seventeenth December A. D. 1807, the one in favour of Benoist Bizayou and wife and the other in favour of Alex. MacNair and others against Gregoire Sapy, issued out of the office of the Clerk of the General Court of the Territory of Louisiana, and two other writs of fieri facias were also on the 22d day of November in the year last aforesaid, the one in favor of Eulalie Du Phine, heir of Barriere, dec'd, and the other in favour of Jean Baptiste Lemoine, issued out of the office of the Prothonotary of the Court of Common Pleas of the District of St. Louis against the said Gregoire Sarpy, copies of which said executions are hereto annexed and make part of this deed; and whereas by virtue thereof all right, title and interest of the said Gregoire Sarpy to a certain tract of land situate, lying and being on the River Des Peres, District of St. Louis, the same being a *part* of the quantity of six thousand arpents granted to said Sarpy as per concession from Charles D. Delassus, dated the 28th October, 1802, containing the said tract 4002 arpents, being the same more or less, and the same premises being by me, the said Sheriff, advertised acording to law, and afterwards, to-wit, on the 9th day of March past, at the court house door, and whilst the Court of Common Pleas and Quarter Sessions of the Peace for the District aforesaid were in session, exposed to sale, cried and sold to Pierre Chouteau, of the town and district of St. Louis, for the sum of fifty dollars current money of the United States. Now therefore know ye, that by virtue of the powers vested in me by law, for and in consideration of the sum of fifty dollars as aforesaid, to me, said Sheriff, well and truly paid and fully satisfied by the said Pierre Chouteau, I do hereby grant, assign, transfer and make over to him, the said Pierre Chouteau, his heirs and assigns, all the right, title, interest and property of him the said Gregoire Sarpy, in and to the aforementioned and described premises and appurtenances: To have and to hold the same to him the said Pierre Chouteau, his heirs and assigns. In testimony whereof, I, the said Sheriff, have hereunto set my hand and seal the 29th day of June, in the year of our Lord 1808. Signed, sealed and delivered in the presence of—"fully" interlined, the words "being a part of the quantity of six thousand arpents" interlined.

(Signed) JERE'H CONNER, [L. S.] Sheriff Dist. St. Louis.

THOMAS RIDDICK.
CABANNE.

On the 29th June, 1808, before me, the subscriber, a Justice of the Peace for the Township of St. Louis, personally came Jeremiah Conner, Sheriff of the District of St. Louis, and acknowledged the foregoing deed or instrument of writing to be his act and deed according to the true intent and meaning thereof and the land and premises therein contained to be the right and title of the within named Pierre Chouteau his heirs and assigns.

THOS. J. RIDDICK.

This deed was acknowledged before a Justice of the Peace, and being a Sheriff's deed and but a quit claim, passed no title to the land, for Sarpy had none, but for want of proper acknowledgment was absolutely *void* as held by the Supreme Court of Missouri in the following cases:

Ryan vs. Carr, 46 Mo. 482.
Adams vs. Buchanan, 49 Mo. 64.
Scruggs vs. Scruggs, 41 Mo. 242.
Allen vs. Moss, 27 Mo. 364.
Allen vs. King, 35 Mo. 225.

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(4) DEED.

PIERRE CHOUTEAU TO PELAGIE CHOUTEAU, WIDOW LABADDIE.

Know all men by these presents, that I, Pierre Chouteau and Brigette his wife, of the town and district of St. Louis and territory of Louisiana, acknowledge to have this day sold, ceded, relinquished and transferred and by these presents we do sell, cede, relinquish and transfer, just as I have acquired it from Jeremiah Conner, Sheriff of the district of St. Louis, at the sale of the property of Gregoire Sarpy, by virtue of executions issued to him, as it appears by the sales of said sheriff on the date of the 29th and 30th instant, to Pelagie Chouteau, Widow Labaddie, of the town, territory and district aforesaid, to-wit: A land situate on the River des Peres, in the district of St. Louis, containing the quantity of sixteen hundred and thirty-two arpents and forty-eight perches, more or less; upon which land there are a flour mill with a brick building, a dwelling house, a barn, &c. Also, another land of 4002 arpents, also situated on the River des Peres; and another land of 1400 arpents situated on the River Meramac, in the district aforesaid: *the two last lands forming a part of a concession of* 6000 *arpents granted to said Gregoire Sarpy by Don Charles Dehault Delassus on the* 28*th October*, 1802. And lastly, one arpent in front by forty in depth, situated on "Marais Croche," district of St. Charles and territory aforesaid, for the price and sum of one dollar current money of this country, which we acknowledge to have received of Pelagie Chouteau Widow Labaddie, and from which by these presents we give her a full release, desiring her to take possession of the said lands and hold the same from this day to her, her heirs or legal representatives, and as of property to them belonging, promising, &c., obligating &c., renouncing, &c.

In testimony whereof, we have signed and sealed these presents before witnesses, in the town of St. Louis, the thirtieth day of June, in the year of our Lord one thousand eight hundred and eight.

PIERRE CHOUTEAU.
SAUCIER CHOUTEAU.

CHS. SANGUINET.
CABANNE.

(5) Rejection of Sarpy's Claim by Commissioners.

Gregoire Sarpy claiming six thousand arpents, situate on the River des Peres, district of St. Louis, produces record of a concession from Charles D. Delassus, Lieut. Governor, dated 28th October, 1802: record of a plat of survey of four thousand and two arpents, dated 18th March, 1803: record of a plat of survey of one thousand four hundred arpents, dated 2nd January and certified 15th April, 1804.

December 9, 1811: present a full Board. It is the opinion of the Board that this claim ought not to be confirmed. II Vol. Am. St. Papers, Duff Green Ed., page 536.

(6) DEED

OF BERNARD PRATTE AND OTHERS, HEIRS OF MADAME LABADDIE, TO WILSON P. HUNT.

Know all men by these presents, that we, Bernard Pratte and Emily Labaddie Pratte, his wife, August P. Chouteau and Sophia

Labaddie Chouteau his wife, John Little and Maria Antoinette Little his wife, Silvester Labaddie and Victoria Gratiot Labaddie his wife, and Gregoire Sarpy and Pelagie Labaddie Sarpy his wife, all of the county of St. Louis and territory of Missouri, in consideration of the sum of twenty thousand dollars in hand paid by Wilson P. Hunt, the receipt whereof we do hereby acknowledge, have this day given, granted, bargained and sold, aliened, enfoeffed, released and confirmed, and by these presents do give, grant, bargain and sell, alien, enfoeff, release and confirm, to the said Wilson P. Hunt, his heirs and assigns, forever, *two tracts* of land lying in the county of St. Louis, in the territory of Missouri aforesaid, *on the River des Peres* heretofore conceded under the authority of the Spanish government to the said Gregoire Sarpy. The *one* granted to the said Gregoire Sarpy under the authority aforesaid by Charles Dehault Delassus, Lieutenant Governor for the time being of the district of St. Louis, in the province of Upper Louisiana, by a concession bearing date the *20th October*, 1802, and in the figurative plan and certificate of survey made thereof by order of the Lieutenant Governor aforesaid, described as follows, to-wit: Beginning at a stone on the south bank of said river Des Peres and running thence south 140 perches, thence west 515 perches, thence south 120 perches, thence west 165 perches, thence north eight hundred and ninety perches to a white hickory or walnut on the said river, and thence down the said river to the beginning, and *supposed* to contain four thousand and two arpents, *be the same more or less.* *The other tract* of land, granted originally under the authority aforesaid, and by the Lieutenant Governor for the time being, to Antoine Reilhe and Madame Ann Veuve Camp, by a concession, *supposed to* contain two thousand nine hundred and five arpents, 36 perches, and 40 feet and 6 inches, of which the part of the said Antoine Reilhe was by regular conveyances derived from him by the said Gregoire Sarpy, and which was afterwards divided by the consent of the said Madame Veuve Camp, and under the authority and direction of the said Charles Dehault Delassus, between the said Gregoire Sarpy and the said Madame Ann Veuve Camp, and the portion of which allotted to the said Gregoire Sarpy is in the figurative plan and certificate of survey described as follows, to-wit: Beginning at a point on the north bank of said river, and running thence north 23 degrees east 30 arpents, thence north 9½ degrees east 34 arpents, thence south 73 degrees west 6 arpents and 3 perches, thence west 69 arpents and 2 perches, and south 49 arpents and 6 perches to a point on the river, pursuing the line dividing the land so there allotted to the said Sarpy from the land then so allotted to the said Ann Veuve Camp, and thence down the said river to the beginning, and *supposed to contain* 1632 arpents, 48 perches, 105 feet 9 inches, be the *same more or less*, and comprehending a stone mill house, dwelling house, and back and other improvements situated thereon, which *two* said tracts of land were subsequently confirmed to the said Gregoire Sarpy under the authority of the Government of the United States of America, by a board of commissioners appointed with authority to confirm the same, which confirmation was finally ratified by an act of Congress and President of the United States in that case made and provided, being all the lands on the said river Des Peres at any time granted to the said Gregoire Sarpy under the authority of the Spanish Government, or claimed by him under the said Antoine Reilhe, or confirmed to him by the Government of the United States, and *being also two of the tracts of land* heretofore sold by Jeremiah Conner, Sheriff of the county of St. Louis, to satisfy certain debts of the said Gregoire Sarpy (in virtue of certain executions to him for that purpose directed) *to Pierre Chouteau, and by the said Chouteau, and Saucier Chouteau his wife, by deed bearing date the* 30*th June*, 1808, *conveyed to Madame Pelagie Chouteau, Veuve Labaddie, and which descended from her, she being now dead*, to the said Bernard Pratte and Emily Labaddie Pratte, August P. Chouteau and Sophia Labaddie, John Little and Maria Antoinette Little, Sylvester Labaddie and Victoria Gratiot Labaddie, and Gregoire Sarpy and Pelagie Labaddie Sarpy;

And *we* do hereby give and grant, bargain and sell, alien, enfeoff, release and confirm, to the said Wilson P. Hunt, his heirs and assigns, forever, all the *lands* which *we* may be entitled to *in virtue of the said concessions*, or of the confirmation whereby the same was confirmed *to the said* Gregoire Sarpy by *the Board of Commissioners of the United States of America, acting under the authority of the said United States* and the act of the President and Congress of the said United States. To have and to hold the SAID TWO TRACTS of land, with all ways, waters, woods, houses, outhouses, mills, easements, privileges and advantages thereon, or arising out of or accruing from the *said concessions or confirmations*, to him, the said Wilson P. Hunt, his heirs and assigns forever. And *we* do hereby warrant and do covenant to defend, for ourselves, our heirs, executors and administrators to the said Wilson P. Hunt, his heirs and assigns forever, the right, title, possession and enjoyment, into and of the *said lands*, and all privileges and advantages thereto appurtenant, or arising out of, or accruing from the same, *as above mentioned*, against the right, title and claim of all and every person or persons whatsoever.

In testimony of all which, we have hereunto set our hands and seals, this 29th day of August, 1817.

BERNARD PRATTE, [L. S.]
E. L. PRATTE, [L. S.]
SYLVESTER LABADDIE, [L. S.]
VICTORIA LABADDIE, [L. S.]
GREGOIRE SARPY, [L. S.]
LABADDIE SARPY, [L. S.]
A. P. CHOUTEAU, [L. S.]
LABADDIE CHOUTEAU, [L. S.]
JOHN LITTLE, [L. S.]
MARY LABADDIE LITTLE, [L. S.]

Signed, sealed and delivered in presence of us.
F. M. GUYOL, J. P.

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(7) Act of Congress Authorizing Patent to Issue.

Act of Congress authorizing Patent to issue, approved August 11, 1842. "It shall be the duty of the proper officers of the United States to issue a patent to Gregoire Sarpy, or his legal representatives, for seven thousand and fifty-six arpents, containing six thousand and two acres and fifty-hundredths of an acre of land, pursuant to Patent Certificate number One Thousand and Thirty-Three, dated September thirteenth, one thousand eight hundred and twenty-five, and to the survey thereof numbered One Thousand Nine Hundred and Fifty-three, certified by the surveyor of Illinois, Missouri and Arkansas at St. Louis on the thirteenth day of September, one thousand eight hundred and twenty-five."

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(8) PATENT.

THE UNITED STATES OF AMERICA, TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas, by the Act of Congress, approved 11th August, 1842, entitled "An Act for the Relief of Gregoire Sarpy or his Legal Representatives," it is directed that patent shall be issued to "Gregoire Sarpy of his legal representatives, for seven thousand and fifty-six arpents, containing six thousand and two acres and fifty hundredths of an acre of land, pursuant to patent certificate number one thousand and thirty-three, dated September thirteenth, one thousand eight hundred and twenty-five, and to the survey thereof numbered one thousand nine hundred and fifty-three, certified by the Surveyor of Illinois, Missouri and Arkansas, at St. Louis, on the thirteenth of September one thousand eight hundred and twenty-five," which survey is in the words and figures following, to-wit:

"SURVEY NO. 1953."

"Surveyed for Gregoire Sarpy, who claims in his own right 7,056 arpents, equal to 6,002 $\frac{50}{100}$ acres of land, situate in townships 44 and 45 north, range No. 6 east of principal meridian, on the River des Peres. Begin at Eugene Alvarez' upper corner, on the River des Peres, a stone, &c., thence south 36 deg. west 52 chains"—equal to 180 poles—full description. "May 6 and 7, 1818."

Now know ye, that there is therefore *granted* unto the said Gregoire Sarpy or his legal representatives, the tract of land embraced and described in the foregoing survey.

To have and to hold the said tract, with the appurtenances, unto the said Gregoire Sarpy or his legal representatives, and to his heirs and assigns, forever.

In testimoney whereof, I, Andrew Johnson, President of the United States, have caused these letters to be made patent, and the seal of the general land office to be hereunto affixed. Given, &c., February 1, 1869.
By the President,
ANDREW JOHNSON.
[L. S.]
By Frank Cowan, Secretary,

The full extent of Sarpy's claim was for 6000 arpents. This survey patented to the plaintiffs, contains 7,361 arpents, as by Couzzins' survey and map, and by Pitzmann 7477 $\frac{63}{100}$ arpents.

Chancy R. Barns, Printer, 215 Pine Street. Brief printing a specialty.

IN THE

Supreme Court of the United States.

October Term, 1875.

No. 140.

James L. D. Morrison, *et al.*,
Plaintiffs in Error,
vs.
William H. Benton, *Defendant in Error*.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

JOHN M. KRUM,
Attorney for Defendant in Error.

IN THE

Supreme Court of the United States.

October Term, 1875.

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vs.
William H. Benton, *Defendant in Error.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

The plaintiffs sued in ejectment to recover possession of the undivided two-thirds ($\frac{2}{3}$) part of several parcels of land situated in the County of St. Louis, Missouri, being part of United States survey, No. 1953.

The land in controversy is claimed by the plaintiffs as a part of six thousand arpents conceded under Spanish authority by Delassus, Lieutenant Governor and Commandant in Chief of Upper Louisiana, to Gregoire Sarpy, October 28, 1802.

The plaintiffs claim to be the legal representatives of Gregoire Sarpy, and that they were entitled to possession of the land sued for on the seventh of July, 1873.

The defendant in his answer specifically states the parcels of land—parts of said United States survey 1953—that he claims and held in possession when this suit was begun. The defendant denies that the plaintiffs are entitled to the possession of the land, and alleges that he and the parties under whom he derives and claims title, have been in the *actual, undisturbed, continuous adverse possession of the land for ten years* and more next before this suit was begun. This is the statute of limitation in Missouri, in respect to real property.

The parties having waived a jury, the case was tried by the Court.

At the trial, the parties stipulated that the parcels of land sued for in this case, containing in the aggregate, 779.25 acres, are within the outboundary lines of said United States survey 1953; hence there was no controversy in respect to the location of the land; and that it was covered by the patent dated February 1, 1869, granted by the United States to Gregoire Sarpy, or his legal representatives.

It was further stipulated at the trial, that Gregoire Sarpy died in St. Louis, in 1824, leaving three sons, John, Peter and Thomas, surviving him; that plaintiffs claim under the said John and Peter Sarpy, both of whom were living at the time of the enactment of the Act of Congress, for the *relief of Gregoire Sarpy, or his legal representatives*, approved August 11, 1842.

It was further stipulated at the trial, that Gregoire Sarpy is the same party of that name, who with others, conveyed the land in question by deed, dated August 29, 1817, to Wilson P. Hunt, under whom the defendant claims and derives title, and that all of the grantors in said deed died prior to February 1, 1869, the date of said patent.

These are the most important facts settled by stipulation of the parties at the trial, and they are grouped here for convenient and ready reference, as these facts are considered pertinent and controlling elements in the consideration of this case.

[*Vide*—Stipulation of parties, Printed Record, pp. 38.]

First.—The plaintiffs claim that they are the legal representatives of Gregorie Sarpy, and, as his heirs, are Congressional grantees of the land, through Act of Congress approved August 11, 1842, and the patent issued in obedience thereto, February 1, 1869. And to support their claim of the title to the *locus in quo*, the plaintiffs gave in evidence and relied upon the confirmation, under the laws of the United States, of the concession made to Gregoire Sarpy by Delassus, Spanish Lieutenant-Governor, October 28th, 1802—the United States survey No. 1953, Sept. 13, 1825, of the land confirmed—the Patent certificate, No. 1033, issued by the Recorder of Land Titles, Sept. 13, 1825, and also the said Patent.

The defendant claims that he, by purchase and conveyance, is the legal representative of Gregoire Sarpy, and relied on the same Governmental muniments of title given in evidence by the plaintiffs.

The defendant also plead the statute of limitations—ten years' adverse possession.

First—The defendant in error maintains that the land in question was confirmed to Gregoire Sarpy or his legal representatives by Act of Congress, approved April 29, 1816. This claim—the concession of 6,000 arpents by Delassus to Sarpy—with other claims, was reported by Recorder Bates to the Commissioner of the General Land Office, and by him to Congress, and the claimants were confirmed in their claims and possessions by said Act of Congress.

This confirmation, as shown in evidence, was surveyed for Sarpy in May, 1818, which was approved and recorded Sept. 13, 1825, and a patent certificate, No. 1033, was issued on the same day by the Recorder of Land titles.

From the time of the approval of the survey (1953) in 1825, the authority to issue a patent to Sarpy for the land

surveyed was ample. No further legislation to authorize a patent to issue was necessary. Whether or not, prior to the passage of the Act approved August 11, 1842, a patent in Sarpy's case had been suspended, does not affect the question. That the authority to issue a patent then existed, and was never repealed or taken away, cannot be successfully controverted. Nor need we stop to consider any reasons that may have existed or are supposed to have existed, that in the opinion of the Commissioner of the General Land Office stood in the way of issuing a patent. The authority, nevertheless, to issue one, existed. The Act of August 11, 1842, was unnecessary legislation in the premises. It may be censidered, in this connection, merely *directory* to the proper officers.

If a patent had been issued to Gregoire Sarpy or his legal representatives on his patent certificate issued in 1825, as might have been done under the law, the patent would have been a valid muniment of title. It would have had the same force and effect that the patent has which was issued in 1869—no more, no less.

The Court will observe that I do not contend that a patent was necessary in the premises, to vest a complete title to the land. The Act of Congress confirming the claim was itself a grant. The issuing of the patent is merely cumulative. The defendant, and the parties under whom he claims, is entitled to the benefit of the grant and patent. Keeping in view the conveyances that had been made by Gregoire Sarpy prior to the approval of the official survey of the land in 1825, it will be seen that Wilson P. Hunt was the legal representative at the time the Patent certificate 1033 was issued. Had a patent been issued at that time, Hunt would have been the beneficiary thereof. Of course, this is upon the assumption that the deed executed by Gregoire Sarpy and others, dated August 29, 1817, was operative to convey the right or estate, Sarpy then had in the land. This is so, whether or not Sarpy, by this deed, affirmed the Sheriff's deed to Chouteau. While we maintain that the deed of the 29th August, 1817, was an affirmance of the Sheriff's deed to Chouteau, as was held by the Court below, this fact or conclusion is not material, because, if the Sheriff's deed was inoperative to convey the land to Chouteau, the title thereto remained in Sarpy to the time he made his said deed to Hunt. That deed was operative, and conveyed all the right, title and interest of Sarpy in the land to Hunt and his heirs and assigns. This is the result of the evidence in this cause, and it does not admit of any question or dispute whatever.

The evidence in this cause further shows that the defendant now holds the estate and title which Hunt acquired by the deed af Sarpy, dated August 29, 1817.

Claiming, as we do, that a complete title to the land was vested in Gregoire Sarpy, in virtue of the Act of Congress of April 29, 1816, we show by the conveyances in evidence that Sarpy's interest and title has been, by formal and operative cenveyances, transmuted to the defendant.

As Gregoire Sarpy, before his death in 1824, had divested himself of all claim and title to the land in question by the methods stated, no interest or estate in the land descended to his sons—his only heirs; consequently, the plaintiffs, who claim under two of said sons, have no interest or estate in the land.

Thus, the defendant establishes a complete defence to the plaintiffs' action. Here we may safely stand, for it seems to us our position is impregnable.

Second—The statute of limitations (the law of Missouri) viz: *that the defendant and the parties under whom he derives and claims title to the land have been in the actual, undisturbed continuous adverse possession of the land for ten years next before this suit*, constitutes a good bar to the action.

The adverse possession pleaded, is admitted by the stipulation of plaintiffs, who simply deny that the statute began to run prior to the issuing of the patent in 1869.

Under the laws of Missouri, adverse possession for the period of time provided by statute, gives title—a title on which ejectment can be maintained. Of course, such possession and title would be an effectual bar to an ejectment.

The law on this subject is fully and clearly stated in the case of Biddle *vs.* Mellen, 13 Mo. Rep. 335. This case was decided in 1850.

Since then there have been a series of cases in the Supreme Court of that State, down to Barry *vs.* Otto, 56 Mo., 177, decided in 1874; and all of them are in affirmance of the doctrine settled in Biddle *vs.* Mellen. The defence in this case, under the statute of limitations, rests on two grounds:

1st. The claim of Sarpy, under the concession made by Delassus, was reported to Congress, and acted upon, and was confirmed by Congress. This was by Act of 29th of April, 1816, and this Act, *proprio vigore*, granted the land to Gregoire Sarpy or his legal representatives. In pursuance of this grant the land was surveyed, designated and severed from the public domain. The legal representatives of Gregoire Sarpy acquired the legal title to the land at the time of the approval of said Act. A patent was not necessary to perfect the title. If a patent had been issued, it would have been simply a muniment of title to the confirmee—nothing more.

Langdeau *vs.* Hains, 21 Wall., 521.
Marsh *vs.* Burks, 14 How., 513, 524.
Grignon *vs.* Astor, 2 Id., 244.

2d. If, as is contended for by plaintiffs, the legal representatives of Gregoire Sarpy are "*Congressional grantees*" of the land, it must be in virtue of the Act of August 11, 1842. And conceding this, then it appears in evidence that John B. and Peter A. Sarpy, under whom plaintiffs claim (as is admitted), were adults, and living at the time the said act of Congress became a law. If this Act by itself is to be construed to be a *present* grant, the patent issued in 1869 added nothing to the title. As no disabilities are shown, the possession of the defendant, on the theory that the Act of 1842 is a grant, effectually bars the plaintiff's right of entry.

Third—The questions of law arising upon the facts stated in the finding of the Circuit Court, which that court decided, are the following:

1st. That the deed of Gregoire Sarpy and wife, and others, to Wilson P. Hunt, dated August 29, 1817, was a confirmation by said Sarpy of the sheriff's sale of the land and his deed to Pierse Chouteau, made in 1808. [This is tantamount to saying that Sarpy, by his own act and deed, rendered the sheriff's deed operative as a conveyance, notwithstanding it had not been properly acknowledged.]

2d. That the deed of Gregoire Sarpy and others to Hunt, August 29, 1817, conveyed to him the land in question, and that the grantees of Hunt became the legal representatives of Sarpy, through survey 1,953, the patent certificate No. 1033, the Act of Congress, August 11, 1842, and the patent of February 1, 1869, and that said representatives acquired the title to the land described in the patent.

3d. That the title to the premises in dispute, thus acquired, passed by valid conveyance as to the defendant.

If these propositions are well grounded in law, the plaintiffs have no case. It is now proposed to consider them *seriatim*.

The first proposition is to the effect, that Gregoire Sarpy and wife, by the recitals in their deed to Wilson P. Hunt, August 29, 1817, in effect *admitted*, that the two tracts of land therein described, had previously been sold by Jeremiah Connor, sheriff of the County of St. Louis, to Pierre Chouteau.

This recital proves the sheriff's sale and deed, and said Sarpy and wife, and all parties claiming under them, are estopped to deny the fact.

The doctrine of estoppel applies—a party who has executed a deed is thereby *estopped* from denying, not only the deed itself, but every fact which it recites.

It is a general and well settled rule in law, that a recital in a deed of a fact, will conclude both the grantor and his privies, whether in blood or in estate or in law, and this whether the deed be indented or a deed poll.

This is the doctrine of the text books, and the adjudged cases following the text books are numerous and in entire harmony. I need not cite them to this Court.

The plaintiffs claim title to the land in suit under Pelagie *nee* Labadie, who married Gregoire Sarpy, and both joined in the execution of the deed, August 29, 1817, to Wilson P. Hunt.

> *Vide*—9th and 10th, subdivisions of Stipulation of parties, Record pp. 39.

The doctrine of *estoppel*, as recognized by this Court, is well considered in Van Renselaer *vs.* Kearney *et al.*, 11 How, 297.

The rule in that case is applicable to this.

The second proposition affirmed by the Court below is to the effect, that the deed of Gregoire Sarpy and wife, and others, dated August 29, 1817, was operative to convey, and did convey the land to Wilson P. Hunt, and that the grantees of Hunt became the legal representatives of Sarpy, and that said representatives acquired the legal title to the land in controversy, evidenced by the patent issued February 1, 1869.

The construction and effect of a confirmation of an inchoate title, made under the laws of the United States, in cases like this, have been so often considered by this Court, and definitively settled, that the question is no longer open to discussion.

The final act of confirmation of the claim, made by Gregoire Sarpy, operated to vest the title to the property in him if living, and he had not conveyed it. If he had conveyed the land, then the confirmation was operative to vest the title in Sarpy's grantees.

This is the legal operation and effect given by this Court, in cases where the confirmation is made to the original claimant, "*or to his legal representatives.*" The same rule is applied to patents where they are issued, as in this case, to the original claimant, "*or his legal representatives.*"

"This formala, '*or his legal representatives*' embraces representatives of the original grantee in the land by contract, such as grantees as well as by operation of law, and leaves the question open to inquiry in a court of justice, as to the party to whom the certificate, patent or confirmation should enure."

This is the language of this court in Hogan *vs.* Page, 2 Wall., p. 605.

This rule is upheld in many other cases determined in this court.

The Supreme Court of Missouri early established this rule of construction of the formula "*or his legal representatives,*" and it has been followed by that tribunal for a quarter of a century.

The *third* proposition is simply the statement of a conclusion of the court below, and is to the effect that the deeds and other muniments of title given in evidence by the defendant, were operative to vest in him the title to the land in controversy.

If the propositions already considered are well grounded in law, the last is but a corrolary of the former, and the subject need not be further pursued.

Fourth—I now propose to consider the extent of the plaintiff's claim, and the grounds on which this case rests:

1st. Plaintiffs in error claim and sue for the undivided two-thirds ($\frac{2}{3}$) of 6,002 acres contained in U. S. Survey No. 1,953. Of the concession to Sarpy, 4002 arpents were measured, marked and limited by Soulard, the Spanish surveyor, in March, 1803—hence this survey is called the "Soulard Survey." It was claimed at the trial by plaintiffs in error, that a part of the defendant's possessions are westward and outside of Soulard's survey, but the court in its finding say that "if the 4,002 arpents are taken with the River des Peres as the eastward boundary, then all of the defendant's possessions are within the Soulard Survey." This is sufficient for the defendant in any event, for it shows beyond question that his possessions are a part of the land conveyed by Gregoire Sarpy and others to Hunt, August 29, 1817. But the U. S. Survey No. 1,953, embraces *all* of the possessions of the defendant, and this he insists controls the question of boundary.

2d. Plaintiffs in error further assert, that the concession to Gregoire Sarpy, made October 28, 1802, by the Spanish Lieutenant Governor, was void *ab initio*, and was not a *bona fide* grant to an actual settler, prior to 20th December, 1803, and therefore, the concession did not come within the policy or purview of either of the Acts of Congress, providing for the adjustment of land titles in Upper Louisiana.

3d. That there was no confirming Act and survey equivalent to a patent of the concession to Sarpy, and that the title was not divested out of the United States, till the patent was issued under the authority of the Act of Congress, August 11, 1842.

4th. That the Act of Congress of August 11, 1842, is not a *present* grant, nor does it operate as a confirmation of the concession to Sarpy, but it is in terms an authority for issuing the patent to Gregoire Sarpy, "*or his legal representatives*" in the alternative.

5th. That in virtue of the last named Act, the plaintiffs became *Congressional grantees* of the land in controversy.

It is proper to say, that I have not stated these several propositions in the precise language, nor in the order, in which they are stated by the learned counsel for the plaintiffs.

It is clear that the plaintiffs' case depends on the successful demonstration and affirmance in law of these several propositions.

That there was want of authority in the Spanish Lieutenant Governor, to make the concession to Sarpy in 1802, may be conceded. Nor is it claimed that the treaty obligations of the United States in *terms* embraced any but perfected grants.

The Congress of the United States, almost immediately after taking possession of the ceded province, prohibited the recognition of any but perfected grants under the former governments.

Act of March 26, 1804, (2, U. S. statutes,) sec. 14.

If France had remained the sovereign, and had taken possession of the country, it is reasonable to presume that all incomplete grants or inchoate titles, created by its predecessor like the case at bar, would have been recognized and perfected. And why? Because there is in such cases an inceptive equity, that no government would refuse to acknowledge and protect. It would be simply a matter of *conscience* with the government, and there can be no higher obligation. So with the United States, upon assuming control of the ceded country, the duty of securing its inhabitants in their imperfect grants or inchoate titles, rested upon the conscience of this government. Not in form of treaty or other express obligation, but in *foro conscientia*. And the government of the United States has acted upon this principle throughout, in respect to all claims of this character. This elevated principle, founded in justice and equity, pervades all the laws enacted by the United States, providing for the adjustment of land titles in the acquired territory, beginning with the Act of March 2, 1805, down to the present time. No one can question or doubt that this is the spirit of all our laws upon the subject.

The Act of March 26, 1804, which provided for the adjustment of incomplete Spanish or French grants, made to residents of Upper and Lower Louisiana prior to Dec. 20, 1803, undoubtedly was prompted by the same spirit. So we find that the Government of the United States in its legislation has recognized from the beginning, incomplete grants, and inchoate titles which had their origin under its predecessors. Nor has the Government of the United States stopped to enquire or sought to discover whether or not this class of grants were made by competent authority under the preceding government. This has never been done. It is quite obvious why it has not. The principle of equity, which I claim pervades the whole legislation of our Government in respect to this subject, has been recognized by the courts, and notably in *Davis vs. The Police Jury of Concordia*, 9 How., 280, as well as in many subsequent cases. The whole matter must be familiar to this court.

The question, therefore, to be considered, in respect to the concession of Gregoire Sarpy, is not whether it is void for want of authority to make it, but whether the Government of the United States has recognized it by its officers, under its laws, confirmed this imperfect grant to the claimant or owner?

The validity of the concession considered in the *abstract* is not the question here. Whether the Spanish concession was made by competent authority, in my view is immaterial. If the Government of the United States recognized and dealt with it and perfected it into a title, the contest is at an end. The power of the Government to do this cannot be questioned.

As the plaintiffs in error have utterly failed to show that they are *Congressional grantees* in the sense of this expression, I have only to say that the statement of the proposition carries with it its own refutation. It would be a waste of words to say more. To the critical disquisition of the learned counsel of plaintiffs in respect to *estoppel* and *relation* I shall not make reply; none is necessary. The material issues in this case must be determined otherwise.

And in respect to the very critical construction given by my very learned friend to the deed of Gregoire Sarpy and others, Aug. 29, 1817, to Wilson P. Hunt, I have only to say that the deed itself, in its fullness of description and expression, furnishes the best answer to all that has been said in respect to it.

In conclusion I will consider the scope and effect of the Act of Congress approved August 11, 1842.

While it must be conceded that this Act does not, by the use of apt words, expressly confirm the land in question to Gegoire Sarpy or his legal representatives, yet, in connection with the survey and patent certificate—both of which are mentioned in the Act—it may well have the effect of a confirmation. This Act, as a confirmation, was unnecessary, for the reason that an Act of confirmation of the same subject matter had already passed. Nevertheless, a second Act having the same effect is not void. It is cumulative, merely.

In any view, this Act has the effect to ratify and confirm all that preceded it in respect to this grant or claim. Of this there can be no doubt. It ratified and confirmed the action of the Recorder of Land Titles—the survey—the patent certificate—in short, every act and thing, that preceded its passage. Viewed in this light, this Act of Congress gives potency to the patent issued by its direction and authority.

In any view, and whatever construction or effect that may be given this Act of Congress, it answers all of the objections made by plaintiffs' counsel, touching the prior confirmation of the claim under previous laws, as well as to the survey and patent certificate.

But the plaintiffs in error are glaringly inconsistent. They claim that this concession was not confirmed by or under any preceding Act or Acts of Congress, nor by this Act, and that the survey and patent certificate are unauthorized and void. Yet the plaintiffs claim under the patent, which is predicated upon the survey and patent certificate, without the existence of which the patent could not have been issued.

A patent is but the evidence of a sale or grant of land. The executive officers of the Government have no power, except by authority of Congress, to make a sale or grant of land. A patent issued without such sale or grant is a nullity.

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